United States Court of Appeals

for the Second Circuit

APPENDIX

Docket No. 76-1054

B
P/S

IN THE

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

— *vs.* —

LEON GREENBERG,

Appellant.

On Appeal from the United States District Court
for the Southern District of New York

APPENDIX
(Vol. II – Page 381 to End)

LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES
HERALD PRICE FAHRINGER, ESQ.
Attorney for Appellant
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

Daily Record Corporation
Rochester, New York

(7849)

Spaulding Law Printing
Syracuse, New York

UNITED STATES COURT OF APPEALS
FILED
MAR 1 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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R I C H A R D M A N Z I , Smallwood, New York, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Manzi, are you married, sir?

A Yes, I am.

Q How many children do you have?

A Five.

Q Were you in the military service?

A Yes, I was.

Q Where did you serve?

A South Pacific mostly.

Q You were in the navy?

A Yes.

Q What is your occupation?

A Harness trainer and driver.

Q How long have you been doing that?

A Approximately 20 years.

Q Have you raced at Monticello Raceway?

A Yes, I have.

Q And how long have you been racing there?

A Since the track opened.

Q Do you recall in 1970 and years before,

and years after, going to Grossinger's?

A Yes

Q Did you go as part of golf outings?

A Yes, I did.

Q May I ask you whether you recall the procedure where you signed up in the clubhouse for the outing?

MR. KINGHAM: Objection, your Honor; form.

MR. FAHRINGER: I will withdraw it, your Honor.

Q What was the procedure for attending the outing?

A You went to the golf clubhouse and you went in, told them you were a horseman, that you were there for the horsemen's outing, and they asked your name, and they wrote it on a piece of paper which had all the other names on, so they would know how much, you know, how many were there and so on and so forth.

Q But on the day in question, like -- do you know the days that these outings occurred on?

A They were usually on Wednesdays.

Q On the morning of that day, would there be an announcement?

A Yes. There are several announcements

over the PA system at the track where the golf game was going to be that day.

Q Was there a procedure whereby you would then go to the secretary of racing building, if you recall?

A Yes, sometimes they had the form sheet of the papers in the race secretary's building, in the entry room, where you would sign up for the golf there.

Q I show you Defendant's Exhibits J through N, and I ask you whether you recognize those photographs, or what is displayed in those photographs.

A Well, this is the entry room at the track where you drop your horses in the race.

Q Is that where the list would be posted on occasions?

A Yes.

Q Now, in 1970, I ask you particularly, Mr. Manzi, did you participate in horsemen's outings at the Grossinger country club?

A Yes, I did.

Q Do you recall approximately how many you went to?

A At Grossinger's?

Q Yes.

A I would say approximately that year maybe three.

Q That you went to yourself?

A That I went to, yes.

Q And did you have an occasion to win -- were there tournaments conducted, incidentally?

A Yes.

Q Did you have an occasion to win a trophy?

A Yes, I did.

Q And did it have Grossinger's name on it?

A Yes, it does.

Q When was that?

A 1970.

Q Did you bring that with you?

A Yes, I did.

Q I show you what has been marked for identification as Defendant's FF, and I ask you whether that is the trophy that was given to you at Grossinger's in 1970.

A Yes, it is.

Q Does it bear Grossinger's name?

A Yes, it does.

MR. FAHRINGER: I will offer this in evidence, your Honor.

MR. KINGHAM: Objection; relevance.

THE COURT: What days did you play on in the competition?

THE WITNESS: Wednesdays.

THE COURT: What date?

THE WITNESS: Oh, what date? I don't remember the date.

THE COURT: Sometime between May and September?

THE WITNESS: Yes, when the track was in session.

THE COURT: I will allow it.

(Defendant's Exhibit FF was received in evidence)

MR. KINGHAM: No objection to substitution of a copy later, your Honor, if it can be.

THE COURT: Why don't you pass it to the jury, and then he can take it home with him.

MR. KINGHAM: No objection.

(Defendant's Exhibit FF was handed to the jury)

MR. FAHRINGER: Would you like me to proceed anyway, your Honor?

THE COURT: Well, let them look at the

exhibit.

(Pause)

THE COURT: With the consent of both counsel we will give it back to the lucky golfer and let him take it home with him.

BY MR. FAHRINGER:

Q Just a few more questions --

THE COURT: You can take that slip off it. I don't need the slip, if you don't want it.

Q Mr. Manzi, when you were at, on these golf outings, I'm referring specifically to 1970, during July and August, did you ever sign for a golf cart?

A No. They just gave you a key, and told you what number it was, and you went out and took the cart.

Q Did you ever take your wife up to the outings?

A Yes, I have.

Q Anybody else?

A Friends of mine, yes.

Q And they were also entertained free?

A Yes.

MR. FAHRINGER: Thank you.

MR. KINGHAM: May I, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. KINCHAM:

Q Mr. Manzi, I believe you testified you don't recall what dates you played at Grossinger's during 1970, do you, sir?

A Not the actual dates, just that it was on Wednesdays.

Q They were on Wednesdays and it would be during the time that the racing season and the golf season coincided, isn't that right?

A Right.

Q You also played at other hotels on those golf outings,did you not?

A Yes, I did.

Q You'd go to the Nevele?

A Yes.

Q And would you go to Kutsher's from time to time?

A Yes.

Q Now, when you would go on these golf outings, do you know, first of all, Mr. James Curran?

A Yes, I do.

Q And you saw him outside the courtroom this morning, I presume?

A Yes.

Q And I presume you have known him for two years?

A Yes, I have.

Q Do you know whether Mr. Curran is somewhat of a golf buff?

A Yes.

Q Very much interested in golf, is he not?

A Right.

Q And on the outings that you went on, was Mr. Curran always present, to your recollection?

A Yes. Most of the time that I knew of. You know, I'd see him on the golf course quite often.

Q Would that be true in 1970 as well?

A I believe so.

Q Do you know Jake Iberger?

A Yes.

Q Jake Iberger was, was he not, the security director at the track?

A Right.

Q Would he also be on all the golf outings that you went on?

A Yes, he would.

Q Indeed, wasn't he the man that arranged the

golf outings?

A Right.

Q Mr. Manzi, you come from a racing family, don't you?

A Yes, I do.

Q You have brothers and cousins?

A Brothers and nephews.

Q Brothers and nephews who also were racers. Which of your family are harness drivers?

A You mean you want me to name them?

Q As best you can.

A I have a brother Al, a brother John, and then I have a son Richard, Jr. that drives. Al has two sons, Steven and Catella that drive, and John has two sons, Gary and John, Jr., that drive, and I also have two nephews, Edward Loehmeyer, Jr., and Jeffrey Loehmeyer, Jr., that also drive.

Q They all drive at Monticello from time to time?

A From time to time, yes.

MR. KINGHAM: Thank you, Mr. Manzi. I have no further questions, your Honor.

MR. FAHRINGER: No questions, your Honor.

THE COURT: Thank you very much. You are

excused.

(Witness excused)

H O W A R D S A M U E L S , 7 West 81st Street, New York City, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Samuels, are you married, sir?

A Yes, I am.

Q You have a family?

A Nine children and one on the way.

Q Were you in the service, sir?

A Yes, I was.

Q What branch?

A I was on General Patton's staff, I was a lieutenant colonel on General Patton's staff.

Q May I ask about your education? Where did you to go school?

A I went to public schools in the City of Rochester, New York. I was educated in MIT.

Q May I ask, Mr. Samuels, about your public service and some of the offices you ran for, would you

tell us, please?

A I've run for governor many times and lost many times. I was in the cabinet of Lyndon Johnson, I was Undersecretary of Commerce, I was head of the Small Business Administration in Washington, I was a Democratic candidate for Lieutenant Governor in 1966, and I sought the nomination in other years for governor, and I was New York City's major bookmaker -- I was head of OTB.

Q How many years did you occupy that office?

A I occupied that office from 1970 until the beginning of 1974.

Q Have you done any teaching?

A Yes, I teach urban economics at NYU, and at New School. I'm writing a book on America Immobilized for Harper & Row. I consult for America Business Day on productivity and motivation, and I work on the UJA.

Q How long have you known Leon Greenberg?

A Well, I've known Leon Greenberg since I took over OTB in 1970.

Q During that period of time, have you had the occasion to speak to other persons who know Mr. Greenberg?

A Well, obviously, he's a man of great

controversy --

MR. KINGHAM: Objection.

THE COURT: Sustained. Strike it out.

Q Have you talked with other persons who know Mr. Greenberg?

A Yes, and Leon is --

THE COURT: Just wait for a question, Mr. Samuels.

MR. KINGHAM: Objection.

Q As a result of speaking with those persons, have you been able to form an opinion as to what his reputation is in the community for truth and honesty?

A Yes. I've never had --

THE COURT: Just answer the question.

MR. KINGHAM: Objection, your Honor, foundation.

A I have never had --

THE COURT: Just answer the question.

A I have talked to him, yes, I have.

Q What is that reputation?

MR. KINGHAM: Objection, foundation.

THE COURT: I will let him give an answer to that.

THE WITNESS: Obviously --

MR. KINGHAM: Objection.

THE COURT: Just tell us --

A I think his reputation for honesty is, has never been questioned in any of the people that I have talked to.

MR. FAHRINGER: Thank you.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Mr.Samuels, I am Barry Kingham. I represent the Government in this case, sir.

Mr. Samuels, you were chairman of OTB beginning in 1970, is that correct?

A That is right.

Q And you ceased your chairmanship of OTB in 1974?

A That's right.

Q Now, was that Statewide OTB?

A No, that was New York City OTB.

Q New York City OTB. Now, there came a time, do you recall, in 1974, when was it, in 1974, sir, that you

ceased being the chairman?

A I think the early part of 1974. I resigned because I was going to run for Governor of the State of New York.

Q Do you recall, sir, that in 19 -- the end of 1973, and early 1974, there was a bill in the Legislature affecting OTB and OTB regions?

A Yes.

Q Do you recall that the gist of that bill was that the OTB region which included New York City was to be expanded so that Monticello Raceway could be included?

A Yes, I do remember that,yes.

Q And do you recall that --

A By the way it was included, Monticello was included earlier than that. I had dealings with Leon Greenberg from 1971 --

THE COURT: Please,jus t answer the questions as they come.

Go ahead.

MR. KINGHAM: Your Honor, may I have the beginning of the answer read back? I am afraid my train of thought was lost.

THE COURT: Read the question back and let's get an answer to that question.

(Record read.)

Q Do you recall, Mr.Samuels, that in connection with that bill, Leon Greenberg was very active in trying to obtain its passage through the Legislature?

MR. FAHRINGER: I object to this, if it please your Honor.

A I would imagine that's --

THE COURT: Overruled.

A I don't know, I would thin that's factual.

Q And you indeed had had dealings with Mr. Greenberg prior to 1974 in connection with his efforts to expand the region, had you not?

A Yes.

MR. KINGHAM: No further questions, your Honor.

THE COURT: Thank you. You may step down.

MR. FAHRINGER: One other question.

REDIRECT EXAMINATION

BY MR. FAHRINGER:

Q Were you and Mr.Greenberg adversaries in that situation?

A Very often.

Q You were arguing against one another, is that correct?

A Had many periods of adversary relationship with

Mr.Greenberg.

MR. FAHRINGER: Thank you.

THE COURT: Thank you.

MR. KINGHAM: Nothing further. Thank you.

(Witness excused.)

G E O R G E B E R K N E R, 112 Cathleen Court, Kiamesha, New York, called as a witness by the defense, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr.Berkner, what is your occupation?

A Race horse trainer and driver.

Q Are you married, sir?

A Yes, sir.

Q Do you have a family?

A Yes, sir.

Q How long have you been engaged in the occupation of training horses and driving horses?

A Approximately 12 years.

Q Was there -- incidentally, are you racing right now?

A Yes,sir.

Q Where?

A Liberty Bell Park in Philadelphia.

Q Did there come a time when you were raicing at Monticello Raceway?

A Yes, sir.

Q Can you tell us when you first was associated with that track?

A Approximately ten years ago, I'd say, as a groom, caretaker.

Q You started as a groom, is that it?

A Yes,sir.

Q What is a groom, incidentally?

A He is a stable hand that takes care of the horse, feeds him, waters him, cleans his stall, cleans his equipment, prepares him for a race, for workouts.

Q And then after occupying that position for a while I take it you began driving?

A Yes, sir.

Q Did you indicate you also train horses?

A Yes,sir.

Q In 1970, do you recall any golf outings at Grossinger's?

A Yes,sir.

Q Did you participate in any of those outings?

A Yes, sir.

Q Do you know approximately how many?

A Whenever there was one, if I was available, sir, I was there.

Q Well, can you tell us in terms of numbers whether it was three, four,how many?

A Well, I couldn't tell you exactly how many, but --

Q Was it more than one?

A Yes, sir.

Q Was it more than two?

MR. KINGHAM: Objection, your Honor.

THE COURT: You tell us, if you remember, any and how many. Do you remember any in 1970, and how many? And if you can, state the dates.

THE WITNESS: I can't, your Honor, state the dates.

THE COURT: Can you state how many?

THE WITNESS: That I participated in? No, I can't.

THE COURT: State how many you participated in either?

THE WITNESS: No.

THE COURT: Next question.

Q In 1970, did you have occasion to eat dinner at Grossinger's?

MR. KINGHAM: Objection.

I will withdraw the objection, your Honor.

A I ate at Grossinger's, yes, I did.

Q Did you eat in connection with a horsemen's outing?

MR. KINGHAM: Objection, your Honor.

A Yes, I did eat in connection with a horsemen's outing.

Q Was that free?

A Yes, sir, everything at Grossinger's was free.

Q Now, at these outings, do you know whether other persons other than the owners -- I am sorry,other than drivers attended them?

A Definitely, yes, sir.

Q What would be some of the other persons other than drivers that attended them?

A Grooms, owners, restaurant men in the area, whoever wanted to come.

MR. FAHRINGER: Thank you very much.

MR. KINGHAM: No questions,your Honor.

THE COURT: Thank you very much. You may step down.

(Witness excused.)

H E R M A N C A R B O N E, 1855 Corporal Kennedy Street, Bayside, New York, called as a witness by the defense, being first duly sworn, was examined and testified as follows:

THE COURT: Before you begin, would some of you gentlemen sit up in the front row so as to make room for some of these people standing up.

(Pause.)

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr.Carbone, what is your occupation?

A Trainer-driver.

Q Trainer-driver?

A Yes.

Q Are you married, sir?

A Yes, I am.

Q Do you have a family?

A Yes.

Q How long have you been engaged in racing and training horses?

A About 23 years.

Q During that period of time have you raced and trained horses at Monticello Raceway?

A Since it opened, 18 years.

Q Do you go back there every year as a rule?

A Every year.

Q Do you recall participating in horsemen's outings at Grossinger's?

A Yes, I do.

Q And do you remember doing that specifically in the year 1970?

A Yes, I would say in 1970.

Q Have you done it ever year that you have been there?

A Well, I remember Grossinger's more because, I am not such a great golfer, I don't go golfing too much, but Grossinger's put out such, you know, such beautiful a layout and everything was so nice, I would always go up there, made up my mind.

Q Do you recall also at Grossinger's there being horsemen's outings, softball games?

A Yes.

Q Were there refreshments and luncheons in connection with those?

A Yes, there were.

MR. KINGHAM: Objection, your Honor.

Q Were they free?

THE COURT: You may answer.

A Yes, they were free.

MR. FAHRINGER: I have no further questions.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Mr.Carbone, you don't recall what dates you played in 1970, do you?

A No, I don't.

MR. KINGHAM: I don't have anything further, your Honor.

THE COURT: Thank you very much, you are excused.

(Witness excused.)

THE COURT: Ladies and gentlemen, we will take a short recess at this time.

(Recess.)

H A R O L D S O F F E R M A N, 719 Northern Boulevard, Baldwin Harbor, New York, called as a witness by the defense, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Sofferman, what is your occupation?

A Florist.

Q May I have the name of your business, please?

A Flowers by Allen, Great Neck.

Q I show you Defendant's Exhibits C and H marked for identification, and I ask you if you recognize both of those documents?

A Yes, I do.

Q What are they?

A Those are the bills for the flowers that I sent Mr. Greenberg after his son's bar mitzvah.

Q Were they the flowers for the bar mitzvah?

A That's right, they were the flowers for the bar mitzvah.

Q Were they paid by Mr.Greenberg?

A Yes, they were.

MR. FAHRINGER: I will offer these in evidence.

MR.KINGHAM: No objection to Defendant's

Exhibits C and H for identification, your Honor.

(Defendant's Exhibits C and H were received in evidence.)

MR. FAHRINGER: No further questions.

MR. KINGHAM: May I,your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Mr. Sofferman, you are a retail florist in Great Neck, Long Island, is that right, sir?

A Correct.

Q And the flowers for the Greenberg bar mitzvah back in 1970 -- by the way, do you specifically recall working on that order?

A Yes, I do.

Q And was it you who delivered them to Grossinger's?

A Yes, it was.

Q Now, those flowers were not paid for by Grossinger's at all, were they?

A No, they were not.

Q You made arrangements with Mr. Greenberg on the side, if you will, for you to supply the flowers and he was to pay you for the flowers, is that right?

A No, I made an arrangement with Mrs.Greenberg.

Q Mrs.Greenberg, I am sorry.

And pursuant to your arrangements with Mrs. Greenberg you then prepared and delivered the flowers up to Grossinger's?

A Correct.

Q And you thereafter submitted your bill to Mr. Greenberg and it was paid in two installments, is that correct, sir?

A Correct.

MR. KINGHAM: I have no further questions.

REDIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Sofferman, do you know whether Grossinger's recommended you to Mr. and Mrs. Greenberg?

A Gee, I don't recollect.

Q Have you handled other affairs at Grossinger's?

A Oh, yes, right. I did Grossinger's granddaughter's wedding at Grossinger's.

Q Was that before this?

A Yes, it was.

Q Thank you.

A Right.

MR. KINGHAM: Nothing further, your Honor. Thank you Mr. Sofferman.

THE COURT: You may step down.

(Witness excused.)

J O S E P H W A S S E R, 7 Rossa Avenue, Monticello, New York, called as a witness by the defense, being first duly sworn, was examined and testified as follows

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr.Wasser, what is your occupation?

A I am sheriff of Sullivan County.

Q And how long have you held that position?

A Four years.

Q Prior to that, were you in the service, sir?

A Yes.

Q Would you tell us about that?

A I was in the United States Army Adjutant General's Department for three and a half years.

Q Did you ever hold any other office in terms of public office?

A Yes,I did.

Q Will you tell us about that.

A I was Town Justice for a period of 19 years and I was head of the Office of Price Stabilization Consumer Goods Division for approximately three and a half years.

Q When were you elected sheriff of Sullivan

County?

Oh, it's '71, November of '71.

Q How long have you known Leon Greenberg?

A Approximately 22 to 25 years.

Q During that period of time have you had the occasion to speak to other persons who know Leon Greenberg?

A Yes.

Q And as the result of speaking to those persons, have you been able to form an opinion as to what his reputation is in the community for truth and honesty?

A Yes.

Q What is it?

A Excellent.

MR. FAHRINGER: Thank you.

MR. KINGHAM: May I inquire, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Sheriff Wasser, I am Barry Kingham, I represent the Government in this case.

A Good morning.

Q During what year, Sheriff Wasser, were you a Town Justice up in Sullivan County?

A Well, it's 23 -- about 1953 was the beginning of

my term of office.

Q And you ended around 1973 or '72?

A February of '71.

Q 1971. And that was in the town of Thompson, is that correct?

A That's correct.

Q The Town of Thompson is one of the towns which is a geographical area located within Sullivan County, isn't that correct, sir?

A Yes.

Q During your tenure as a Town Justice did you become familiar with the existence and the workings of Monticello Raceway?

A Just the latter part of my term of office, not at the beginning, there was no racetrack there.

Q And what years would you say that you became familiar with the operations of Monticello Raceway?

A Well, when they started, probably about --

Q 1958 or 19 --

A '58 or '59, right.

Q And thereafter you came to know about how Monticello Raceway operated, is that correct?

A Well, I had nothing to do with their operations. All I knew, it was there and it was operating.

Q Now, as the sheriff of Sullivan County, had you had occasion to perform any services in connection with Monticello Raceway?

A At some time,yes.

Q And do those include furnishing guards for armored cars and so forth?

A Yes.

Q During what period of time has your sheriff's department performed that service?

A It was performed prior to my term of office, and it was continued as a service.

Q Which the county provided to the Raceway, is that correct?

A That's correct.

Q And in the course of your furnishing that service to theRaceway, I take it you had dealings with Mr.Greenberg from time to time?

A Not directly. We usually handled it through their security department.

Q And that would have been Mr. Iberger?

A Mr. Iberger and the new man, Mr.Frankie.

Q You said that your acquaintance with Mr. Greenberg goes back how far, sir?

A Well, when he was Assistant District Attorney with

the county, he appeared in my court as Assistant District Attorney, and he had occasion to come in practically two or three times a week.

Q And would that have been back in the late fifties?

A Yes.

Q Located in the town of Thompson, this geographic area where you were a Town Justice, Sheriff Wasser, a development known as Emerald Green, is there not?

A Yes.

Q And to your knowledge is Emerald Green a corporation?

A Yes.

Q Are you familiar with the term "Leisure Time Developers, Incorporated"?

A That is a corporation there, too.

Q And is Leisure Time part of or associated with Emerald Green?

A I am not familiar with their corporate structure at all.

Q Well, to the best of your knowledge, do you have any connection?

A I think so.

Q And you base that on your knowledge of the

town of Thompson over the years, is that correct, sir?

A Yes.

Q Now, did you know during the early 1970s that Leon Greenberg had any connection with Emerald Green?

A Yes.

Q Do you know what his connection was?

A No, I don't.

Q Do you know that he was one of the promoters of Emerald Green?

A Well, what I read in the paper.

Q Now, when you were a Town Justice you were a member of the board, the town b rd, in the town of Thompson, were you not?

A Yes.

Q Were you a member of the town board for over 19 years as a Town Justice?

A I believe so. I am just trying to think. I think I cam off the board when they had four councilmen. That would have been approximately two years prior to '71, about '69.

Q That would be 1969 --

A It became a first class town and two justices were taken off the board.

Q And that is when you were no longer a member

of the town board?

A That's correct.

Q Now, in 1968 or 1969, was Emerald Green in existence in the town of Thompson?

A I don't remember the date.

Q Was it around that time?

A It might have been, yes.

Q '69 or '70?

A Yes.

Q And indeed didn't there come a time, Sheriff Wasser, when you as a member of the town board in the town of Thompson became involved with Emerald Green in your capacity as a member of the town board?

A In what respect do you mean I became involved? I don't understand the question.

Q I will clarify it for you, sir.

A All right.

Q Emerald Green was private property, was it not, it was owned by a corporation?

A Yes.

Q Isn't it a fact when you were a member of the town board in the town of Thompson you permitted the taxpayers money to be used to paye the streets in Emerald Green?

MR. FAHRINGER: I object to that, your Honor.

A I don't remember that at all. I voted with the town board.

MR. KINGHAM: No further questions.

REDIRECT EXAMINATION

BY MR. FAHRINGER:

Q You say you don't recall that?

A I was sitting on the board and there might have been requests forpavement of the roads through the town and I might have voted that, but I don't remember the vote.

Q You don't remember voting for streets in Emerald Green?

A Yes.

THE COURT: Were streets put in Emerald Green?

THE WITNESS: Some were and some weren't.

THE COURT: What time, while you were on the board?

THE WITNESS: Somewhere while I was on the board.

RECROSS-EXAMINATION

BY MR. KINGHAM:

Q That was pri. te property, was it not?

A Some roads, I believe in recollection were taken over by the town.

THE COURT: How about the rest of the roads?

THE WITNESS: Some weren't, and they were not

touched, but I believe some of them were taken over by the town on a referendum.

Q Do you know when that was, sir?

A No, I don't remember the date.

MR. KINGHAM: Nothing further, your Honor.

THE COURT: Thank you very much. You may step down.

MR. FAHRINGER: No further questions.

(Witness excused.)

R O B E R T D E L C A M P O, 78 Moon Manor Apartments, Monticello, New York, called as a witness by the defense, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Del Campo, what is your occupation?

A I am a trainer-driver at Monticello Raceway.

Q All right, and are you married, sir?

A Yes, I am.

Q Do you recall when you first started racing at Monticello Raceway?

A Yes, 1970.

Q Do I understand now that was your first year that you were active at Monticello Raceway?

A Right.

Q During that year, do you recall participating in horsemen's outings that were held at Grossinger's?

A Yes, I do.

Q Do you recall about how many you participated in?

A Approximately four or five.

Q Would that have been in August and July of that year?

A Yes, it was.

MR. KINGHAM: Objection.

THE COURT: Overruled. Please don't lead your own witness.

MR. FAHRINGER: Sorry, your Honor.

Q Now, Mr.Del Campo, can you tell us what the procedure would be for attending these outings?

A Yes,I can.

They usually were held on Wednesdays and they would announce it over the public address at the racetrack, around ten o'clock in the morning where the golf games would be held that particular day, and we would go down into the entry room and sign the sheet, a lot of guys would sign in that were going and a lot of guys didn't, you know, there was a few times I didn't sign up.

MR. KINGHAM: Objection.

THE COURT: You said a lot of guys did and a lot of guys did not, is what what you said?

THE WITNESS: A few guys did and a few guys did not, sometimes I was too busy to go down to sign up, but as soon as I got done I would.

THE COURT: I wanted to be sure I heard your "nt", did not.

Q In other words, some people might go on the outing that did not sign up on the sheet?

A Yes.

MR. KINGHAM: Objection, your Honor.

Q Mr. DelCampo, incidentally, was -- well, when did you start playing golf?

A That was the first year that I started.

Q 1970?

A That is how come I remember.

Q And on these outings that you participated in, can youtell us about how many people from the racetrack would participate in the golf outing?

A I would say between 35 or 50.

MR.FAHRINGER: I have no further questions.

CROSS-EXAMINATION

BY MR. KINGHAM:

MR.KINGHAM: May I inquire, your Honor?

Q Mr.Del Campo, did you race at Monticello in the last meet during this season?

A Yes,I did.

Q You are a driver, are you not, sir, trainer-driver?

A Yes.

Q Are you presently racing now anywhere?

A No, I am not.

Q And there is to be a winter meet or winter season at Monticello Raceway, is there not?

A Correct.

Q Do you know when that starts?

A November 27, I believe.

Q Do you hope to race in that meet?

A Yes, I do.

Q Now, when you bring a horse into Monticello Raceway that you intend to race at Monticello, you make application at the racing secretary's office, do you not?

A That's correct.

Q And the racing secretary isa man named Ralph Swalsky, is that correct?

A That's correct.

Q He has an assistant, does he not?

A Yes, he does.

Q And that would be John Manzi, Jr.?

A Yes.

Q Is it the job of the racing secretary to assign stable space?

A Yes,it is.

Q And is it also the job of the racing secretary to determine whether or not your credentials are in order?

A Yes.

Q And is it also the job of the racing secretary to determine whether or not you are even going to get stable space?

A Yes.

Q Now, the racing secretary works for the management, does he not, if you know?

A I don't know. I assume he does.

Q Do you know if he is employed by the Raceway or by the Harness Racing Commission?

A I don't know.

THE COURT: Don't you know whether he is employed by the State or whether he is employed by the owners?

THE WITNESS: No, I don't. All my interest is to get stable space and get my horses on the grounds.

Q You have been racing at Monticello since when, sir, I am sorry?

A I have had my own stable since 1972, public stable, and I first came there in '70 as a groom.

Q Since you began there in 1970 as a groom and have continued then working and racing at Monticello, have you come to know who the boss is at the Raceway?

MR. FAHRINGER: I will object to that,your Honor.

THE COURT: Overruled.

Rephrase what that euphemistic word intends.

MR. KINGHAM: I will, your Honor, I will rephrase the question.

Q Do you know who the head of the Racetrack is?

A I just know who the president is.

Q All right, who is the president?

A Mr. Greenberg.

Q Mr. Greenberg, seated right here?

A Yes.

Q During the time you have been racing there you have had contact with Mr.Greenberg from time to time, have you not?

A Not really.

MR. KINGHAM: Nothing further,your Honor.

THE COURT: All right, you may step down.

(Witness excused.)

J O H N D U N C A N , 59 Spring Street, Monticello, New York, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Duncan, what is your occupation?

A Butcher, Kosher butcher.

Q Where do you work?

A Kessler Brothers in Woodridge.

Q Where is that near?

A It's -- well, it's 11 miles from Monticello, and maybe four miles from Fallsberg.

Q Are you married, sir?

A Yes, sir.

Q How many children do you have?

A Three.

Q What do they do?

A I have two daughters in Florida A and M University and I have a son last year in high school, 17.

Q Have you participated in any organizations in the Monticello area?

A Quite a few, sir.

Q Would you tell us about it?

A Well, I am county coordinator appointed through Ray Wilkins' office for the NAACP for two counties, Orange and Sullivan, for the last five years. I am a member of the commission to help the economy, to help the poor to help themselves, a government program, for ten years. That's located in Liberty under the directorship of Miss Yvonne Commisiong.

I am higher than a master Mason, I am a Royal Arch Mason, looking forward to go to the 32nd Degree. That's the black Masons. Unfortunately there's two different ones. And I am also an Elk. I belong to the directors of the New Home Planning Proposal Program by Judge Shieman, Family Court Judge Shieman to help children under 16 years old to rehabilitate themselves, I'm on that board of directors.

Q Are you a member of the board of directors of the Monticello youth group also?

A I am a vice president of the Monticello youth group in Monticello and it was the only youth group that minority kids could go to at the time that it was started.

Q Now, when did you first meet Leon Greenberg?

A 20 years ago.

Q And how have you been associated with him?

A I have been associated with Mr. Greenberg because Mr. Greenberg was always interested in the community and especially minority groups, and being that I live in a rural area --

MR. KINGHAM: Objection, your Honor.

THE COURT: Yes. Wait for another question.

Q Has he worked with you with the Monticello youth group?

A With every aspect, not only withthe Monticello youth group --

MR. KINGHAM: Objection, your Honor.

THE COURT: Yes, just answer the question, Mr. Duncan.

Q Has he worked with you in the Monticello youth group?

A Yes.

Q And has he worked with you in some of the other projects you have been associated with?

A All of the time.

Q Have you had occasion during the years you have known Leon Greenberg to speak to other persons who know him?

A Many.

Q As a result of speaking to those persons have you been able to form an opinion as to what his reputation is in the community for truth and honesty?

A His reputation was unquestionably honest and he has never made a promise to my knowledge --

MR. KINGHAM: Objection, your Honor.

THE COURT: Just speak about the reputation. You are not here to testify to your opinion of him. You are here to testify only to what the community thinks of him.

Q Can you tell us in response to my question whether his reputation for truth and honesty in the community is good, bad, excellent, whatever?

A Above reproach.

Q Mr. Duncan, may I ask you another question: Did you attend Leon Greenberg's son's bar mitzvah?

A Yes, sir.

Q Were you present during the entire proceeding?

A Yes, sir.

Q Was there an orchestra there, if you recall, a band?

A It s quite a while ago. I'm not sure.

Q You don't remember whether there was an orchestra or not?

A I am not sure.

MR. FAHRINGER: Okay, thank you.

MR. KINGHAM: No questions, your Honor.

THE COURT: Thank you, Mr. Duncan. You may be excused.

(Witness excused)

J U L I U S K R E I T M A N, Post office box, South Fallsburg, New York, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Rabbi Kreitman, where is your synagogue located?

A Right in the heart of South Fallsburg.

Q Are you married, sir?

A Yes, I am.

Q How many children do you have?

A I have six children.

Q Where did you go to school?

A In Yeshiva University, New York City.

Q After graduating from there did you have any additional study?

A Well, I studied in Yeshiva for 11 years, Yeshiva University 11 years.

Q May I ask you, Rabbi Kreitman, what your activities have been in the community of South Fallsburg in terms of work outside the synagogue itself?

A Well, I have been affiliated for about 10 or 11 years in the Hebrew Day School of Sullivan and Ulster Counties. I was also a member of the board of directors there.

Q Do you hold any offices in your profession?

A Presently - no, I am just a member of various organizations, but I hold no offices.

Q Have you in the past?

A Yes, I was president of the local Sullivan and Ulster County Rabbinical Council and I was a national regional vice president of Yeshiva University Rabbinical Alumni.

Q Do you recall the bar mitzvah of Andrew Greenberg that was held on November 7, 1970?

A Yes, I do.

Q Did you preside over that bar mitzvah?

A Yes, I presided over the bar mitzvah.

Q Where was it held?

A At Grossinger's Hotel.

Q What time did the ceremonies commence in the morning?

A 9 o'clock, I believe.

Q And then what time did the religious ceremonies conclude?

A About 12 o'clock, I believe.

Q Now, how long have you known Leon Greenberg?

A For 12 and a half years since I came to South Fallsburg.

Q During that period of time, how is it that you have been associated with him? Is he a member of your synagogue?

A Yes, he is.

Q Has he been active in that synagogue?

A Yes.

Q Will you tell us how?

A Well, first of all, both of his children went to the Hebrew school at which I am the principal and the teacher in the Hebrew school and I have had both of them from the ground up teaching them the Hebrew language and teaching them for the bar mitzvahs as well.

I also have had association with Mr. Greenberg during that particular time when I first came to Fallsburg there was a study group in his home, his wife

and others, and there was a women's study group and I would meet with him regularly, see him quite frequently at the house as well.

Q Have you served with him on -- has he served on the board of the Hebrew day school, if you know?

A Not on the board. He was elected as the president of the Hebrew Day School while I was a member of the board of directors.

Q Now, during the period of time that you have known Leon Greenberg have you had occasion to speak to other persons who know him?

A Well, I know when they were considering his election on the Hebrew Day School that they spoke very highly of him --

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained. You are not here to testify to anything other than his reputation in the community.

The witness who is called in your circumstances is not here to give a person opinion. The jury is not concerned with your personal opinion, so will you concentrate on the questions that are asked and answer only those.

Q If you can, Rabbi Kreitman, answer these

questions yes or no.

Have you had the occasion to talk to other persons who have known Leon Greenberg?

A Yes.

Q And as a result of speaking with those persons have you been able to form an opinion as to what his reputation is in the community for truth and honesty?

A Yes.

Q What is that reputation?

A A highly moral integrity.

MR. KINGHAM: If your Honor please, I have no questions.

THE COURT: You may step down.

(Witness excused)

A N N K A P L A N , 319 Broadway, Monticello, New York, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mrs.Kaplan, how many children do you have?

A Two.

Q Do you hold a political office?

A Yes, I do.

Q What is that office?

A Mayor of the Village of Monticello.

Q How long have you occupied that position?

A About a year and a half.

Q And have you held any other political positions or positions in the political party either prior to that or during that period of time?

A Yes, I entered politics in 1971, and I was a trustee of the Village of Monticello.

Q Have you held any positions as far as the Democratic party is concerned?

A Yes, I am a committeewoman.

Q How about any associations with the community, charitable groups or anything, have you held any positions with them?

A Yes, I was president of the Jewish Community Center of Monticello, I belonged to practically all the organizations, have held various positions in these organizations, such as Hadassah, City of Hope, Deborah Hospital Auxiliary, American Legion -- these are the organizations I belong to.

Q How long have you known Leon Greenberg?

A Well, I would say I know him for about 20

years.

Q During that period of time have you had the occasion to speak to other persons who know Leon Greenberg?

A Yes.

Q And as a result of speaking to those persons have you been able to form an opinion as to what his reputation is in the community for truth and honesty?

A Yes.

Q What is it?

A Everyone --

MR. KINGHAM: Objection, your Honor.

THE COURT: No --

Q Could you give us an answer, good, bad or indifferent, or what?

A Good.

Q Thank you.

MR. KINGHAM: May I, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Mrs. Kaplan, you are a Democrat, is that right?

A Yes.

Q And you have been a democratic committee-woman?

A Yes.

Q Are you a member of the Sullivan County Democratic committee?

A Yes.

Q That is a political organization in Sullivan County, is it not?

A Yes.

Q Of what other political organizations are you amember in the party?

A Democratic party?

Q Yes.

A Well, I am a committee woman in the county, I am also a co-chairman -- I should say I was a co-chairman of the women's division of the New York State Democratic committee. I am now on the platform committee for the State Democratic Committee.

Well, tha's about all right now.

Q And were you a member of the Sullivan County Democratic Committee back in 1973?

A Yes, I was.

Q And do you know, Mrs. Kaplan, whether or not Monticello Racetrack made contributions to that committee

in 1973?

A Not to my knowledge.

Q Not that you know of?

A No.

Q Is your testimony you don't recall whether they did or not?

A I have no way of knowing.

MR. KINGHAM: May I have a moment, your Honor.

THE COURT: Yes.

(Pause)

THE COURT: When you say you have no way ofknowing as a member ofthe committee, wouldn't you know who contributed?

A No. When we have a Democratic committee, that's the county committee, and we have an executive board who takes care of that. We also --

THE COURT. I know they may take care of it but don't the committee members know what's going on and who is giving the money?

THE WITNESS: No, we seldom if at any time get a financial report.

Q Mrs. Kaplan, you have from time to time, have you not, heard who had contributed to the Democratic

committee, have you not?

A Not really, no.

Q You have never heard of anyone contributing to the Sullivan County Democratic committee?

A No.

Q Does it have no funds at all?

A Well, we run functions and that's how I know we accumulate our money.

Q And you have no idea who it is that pays the money for the functions?

A No.

MR. KINGHAM: I have no further questions, your Honor.

THE COURT: Thank you very much. You are excused.

(Witness excused)

L O R E T T A K R A T Z , R.D. 1, Callicoon, New York, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mrs. Kratz, are you married?

A Yes, I am.

Q And do you have a family?

A Yes.

Q How many children do you have?

A Two, a girl 10 and a boy five and a half.

Q Now, where do you work?

A I work at Monticello Raceway.

Q And how long have you been employed there?

A I have been employed since 1969 until the spring of this year as secretary to the director of public regulations and publicity. Before that, from 1964 until 1967 I was employed as secretary to Mr. Franklin E. Devlin, who was the president of Monticello Raceway.

Q So that you have been with the raceway since 1964?

A Yes.

Q And was there a time when you worked with a Mr. Iberger?

A No, I didn;t work for Mr. Iberger, I worked for Mr. Alan J. Finkelson.

Q I'm sorry, was that in the same area?

A As director of public relations and publicity.

Q Yes. All right.

A Yes.

Q And during that period of time -- incidentally, is Mr. Iberger still at the racetrack?

A No, he isn't. He left last June, June of 1974.

Q What was his position, do you recall?

A Yes. He was administrative vice president.

Q While you were there working in the publicity department, do you recall the procedure at all for organizing horsemen's outings?

A Yes. Each Wednesday morning it would be announced that there would be a golf outing at a certain hotel. They were held at various hotels throughout Sullivan County and sometimes they were held at a local golf course. And then about noontime, the racing department would send over a list that would have the names on them, of how many horsemen were going, and we would call the designated hotel

where it would be helf, to alert them as to how many horsemen would be attending so that they would be prepared.

Q In connection with yourwork, did you have occasion from time to time to draw checks for Mr. Greenberg on his personal account and pay bills?

A Well, that only happened if Mrs. McCullough, who was Mr. Greenberg's secretary, wouldbe on vacation, or in the case of Mrs. McCullough was busy, I would help her out and go and help her on this, but I did draw checks only when she was on vacation.

Q I show you Defendant's Exhibit D marked for identification, and I ask you whether you recognize that.

A Yes, it has my handwriting on it.

Q And will you tell us, if you will, please, whether you drew a check on Mr. Greenberg's personal account and paid that bill?

A Yes.

Q What would be the procedure?

A Well, I would take the check, type in the person's name, the amount of the check, hand it to Mr. Greenberg for his signature, and once it had Mr. Greenberg's signature on it I would put it in the

envelope to be mailed, and mark each bill paid with the date that I paid the check, the bill.

Q I show you Defendant's Exhibit CC, it's a poor copy, but would you look at that and see whether you recall drawing that original check?

A Yes, I'm sure.

MR. FAHRINGER: I will offer these in evidence, your Honor.

MR. KINGHAM: Your Honor, no objection to Defendnt's Exhibit D for identification.

THE COURT: Received.

(Defendant's Exhibit D was received in evidence)

MR. KINGHAM: Government will stipulate that the bill was paid, under the circumstances Mrs. Kratz described, and we object to CC as illegible.

THE COURT: Is that satisfactory, Mr. Fahringer?

MR. FAHRINGER: Yes, your Honor.

THE COURT: All right. Let me see that. Okay.

D is in evidence, CC remains marked for identification. Under the stipulation that is agreeable.

MR. KINGHAM: Thank you, your Honor.

MR. FAHRINGER: No further questions.

THE COURT: Any cross?

MR. KINGHAM: I have no questions for Mrs. Kratz. Thank you.

THE COURT: Thank you very much. You are excused.

(Witness excused)

E D N A M. C O Y L E, 263 South Main Street, Liberty, New York, called as a witness by the defendant, being first duly sworn, testified as follows:

D RECT EXAMINATION

BY MR. FAHRINGER:

Q Miss Coyle, where are you employed?

A Sullivan County Harness Racing Association.

Q How long have you worked there?

A Since 1962.

Q What is your present position at the raceway?

A Bookkeeper.

Q Prior to that where did you work?

A Fuelane Corporation in Liberty, New York.

Q May I ask you what you did there?

A Bookkeeper, mostly payroll.

Q Prior to that?

A Teacher.

Q How many years were you a teacher?

A 15 years.

Q What grades did you teach?

A Third, fourth and sixth.

Q And where did you teach?

A St. Patrick's Cathedral.

Q Miss Coyle, how was it that you came to be hired by the Monticello Raceway?

A They had an F1500 Sensimatic Burroughs machine and needed an operator to do thatpayroll at night without supervision. I was experienced on the Burroughs machine, because that was the machine I operated in the Fuelane Corporation. Burroughs Corporation recommended me to the raceway.

Q And you have been there ever since?

A Yes, I have.

Q Would you tell us, if you will, please, in your own words, what the procedure is ordinarilyfor paying bills at the raceway?

A Well, invoices are presented to me for payment. I go over the arithmetical part of the invoice

to be sure it's correct. Generally hold them until a particular day in the week, which is Thursday, and process them as a grouping.

There is one exception: If someone needs a check immediately, because someone is calling for a check, or someone is in for a check, that becomes an isolated case and I can process the check at that time, without waiting for the usual day.

Q Now, tell us how the machine operates, if you will, please.

A It's a long carriage machine. It's a triple action arrangement where you put a register in, bearing a jacket carbon. The ledger is posted to the left, and that makes the impression onthe register. The check is posted to the right, and that also makes an impression on the register, and it's a three-part check, so there are three parts to every check that is written; the check itself, a numerical copy and a copy that is attached to the voucher.

Q Now,in the ordinary course, when you prepare a check, and perhaps you have just explained this, if I didn't understand correctly, but, do you then take the invoice and attach something to it?

A Yes, the procedure after the check is written,

taken out of the machine, the check is bursted, the carbons are removed, the blue copy of the voucher, of the check, is folded and attached to the voucher itself, the invoice itself. The numerical copy is filed numerically and the check is clipped to the voucher, awaiting signature.

Q I show you Government's Exhibit 3 in evidence, a check which is drawn on the Sullivan County Harness Racing Association, Inc., payable to Grossinger's on October 29, 1970, in the amount of $4856.16, and I ask you whether you recognize that check.

A Yes, I do.

Q Is that a check you drew?

A Yes, it is.

Q Is there something about that check which is unusual?

A Yes. If you look to the upper part on the righthand side of this check you will find it reads, to replace check No. 2827 void.

Q Do you recall, Miss Coyle, why it was or what the circumstances were surrounding the voiding of that check #2827?

A Yes. I drew a check through, in the regular procedure that I just explained, and it is evident that I put this check, this original 2827 check in the check-signer, placing a signature on the check by machine.

Q Tell us what is the check-signer.

A It is a Burroughs machine that has a plate in it with the president's and treasurer's names on them, and the check is inserted in the machine, a lever is pushed, and it signs the check.

Q So that is to be distinguished from being hand-signed?

A This is a hand-signed check.

Q Whereas the check, the 2827 numbered check was a machine signed check?

A It was.

Q If a check is machine signed, then no other signature is affixed to it, is that correct?

A That is correct.

Q Would you proceed explaining to us the circumstances now of your redoing the check 2828?

A Check 2827 being machine signed, the check,

the size itself and also it was a check that was under discussion, I tore the signature portion off, which is the usual procedure to void a check, wrote "void" across the amount on the check, and proceeded then to take another fresh check and do it on a typewriter.

If you examine this and compare it with any machine check, you will find that the typing is different.

Q In other words, that check that you hold in your hand now, I think it is Government Exhibit 3?

A Yes, it is.

Q Is not a check that was done on the Burroughs Sensimatic machine?

A No, it is an exact copy of one that was done on theBurroughs Sensimatic machine.

Q But typed by you?

A Yes.

Q Why was it that that check, the one you hold in your hand, Government Exhibit 3, was typewritten?

MR. KINGHAM: Objection.

A For the simple reason that I --

MR. KINGHAM: Objection, your Honor.

THE COURT: She may answer. It takes it out of normal sequence but it will help us understand what happened.

THE WITNESS: Thank you.

THE COURT: You say that there was a check, 2827, that was machine signed, and then there was a discussion, and then you tore up that 2827, and typewrote this one, and then this one got hand-signed by different people?

THE WITNESS: I don't believe, your Honor, that I said there was a discussion. But I felt that the size of this check --

THE COURT: I thought you said it was under discussion.

THE WITNESS: Oh, oh, under discussions, but I mean I wasn't discussing this check. I am sorry.

THE COURT: But the last part of my question was, this one was hand-signed?

THE WITNESS: Yes,sir.

THE COURT: By people who were different than those who signed by machine?

THE WITNESS: Leon Greenberg's name is on the machine plate. Sidney Sussman's is not. The treasurer's name is on the machine plate.

Q Now can you tell us who Sidney Sussman is?

A He is chairman of the board of Sullivan County Harness Racing.

Q And his name would not appear on the machining?

A No, it would not.

Q Would you tell us why it was that you - realize that the first check, the 2827 was machined -- but you send out a lot of check that are machined, don't you?

A Yes, sir.

Q In other words, because a check is machined doesn't ordinarily require it being voided?

A No. For instance, our gas and electric check, we have a certain number of days to get a very substantial discount. Therefore, as soon as I get that check, I process it for payment and sign it on the machine.

Q Why is it that this check, then, was voided, the machined check, so that it could be signed in hand?

A There was some discussion about the --

MR. KINGHAM: Objection, your Honor.

THE COURT: There was a discussion, is that the reason? Following a discussion, you were given instructions, is that what happened?

THE WITNESS: No, I don't believe I was given any instructions.

THE COURT: I am trying to avoid the problem, the legal problem posed by the objection. Were you in on any discussion as to why the other check was voided?

THE WITNESS: No, your Honor, I was not.

THE COURT: All right.

Objection sustained.

Q Miss Coyle, do you know from going back through the record whether there was an executive meeting scheduled for November 2nd?

A There was an executive meeting.

Q Of that year, 1970?

A Yes, November 2, 1970.

Q This check was drawn on October 29, 1970, wasn't it?

A That is correct.

Q That would be, November 2nd was a Monday, wasn't it?

A Yes.

Q Was the next day Election Day, incidentally?

A Yes, it was.

Q That would be November 3?

A 3, 1970.

Q So that -- did you know that that check was --

MR. KINGHAM: Objection, your Honor. Form.

THE COURT: Well, it sounds like you may get into a leading question. I am going to let you finish your question, but I will give specific instructions to the jury, if it happens to turn out to be one that is in violation

of proper form of question.

MR. FAHRINGER: I will withdraw it, your Honor, and reframe the question.

Q Do you know of your own knowledge whether Mr. Sussman is on the executive committee?

A Yes, he is.

Q Do you know whether or not that check, the one you hold in your hand, was signed at that executive committee?

A I feel it was.

MR. KINGHAM: Objection.

THE COURT: Strike out the answer.

The jury will disregard the answer because the response is not a response of personal knowledge, but a sense of feeling, which all of us have feelings, some of them are correct, some of them are not. We can only take evidence of fact.

Q From the procedures that were used by you, Miss Coyle, would you -- incidentally, do you ordinarily draw all the checks that are --

A I would say about 97 per cent of the checks I draw.

Q Do you have an opinion, based upon your experience at the Raceway, of drawing checks and the handling of checks, either mailing or delivering of checks, as to

whether or not that check was mailed or delivered?

MR. KINGHAM: Objection, your Honor.

THE COURT: Sustained.

MR. FAHRINGER: I have no further questions.

MR. KINGHAM: Cross-examination.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Miss Coyle,calling your attention to Government Exhibit 3, that is the $4800 check, I would also like to show you Government Exhibit 29 in evidence.

A Yes, sir.

Q Do you recognize that? That is also a check drawn on the same account of the Sullivan County Harness Racing Association, is it not?

A Yes, it is.

Q That account was at what was then County National Bank in Fallsburg?

A And now is Empire National Bank.

Q Government Exhibit 29, what was the amount of that check and the date, please?

A The amount of the check is $123. The number of the check is 2030.

Q What is the date of the check, Miss Coyle?

A July 20, 1970.

Q Is that a machine check or --

A That is a machine check.

Q And that check is made out to the Grossinger's, is it not?

A That is correct.

Q As is Government Exhibit 3?

A Yes.

Q Would you look, please, at the signatures on Government Exhibit 29.

A Yes.

Q Do you recognize the signature on the bottom line?

A Yes, I do.

Q Whose signature is that?

A Milton Kutcher.

Q Who is he?

A One of our vice-presidents.

Q Is he also a director?

A Yes, he is.

Q He is also director of the executive committee, is he not?

A Yes, he is.

Q And he was back in 1970 as well, if you know?

A Yes, he was.

Q Now the signature -- and that is not a machine

signature, but it is his own, it appears to be handwritten, is that right?

A Yes, that's right.

Q Now the signature that appears on the line above that, what do those words say?

A Leon Greenberg?

Q That is not Mr.Greenberg's signature, is it?

A No, it is a facsimile, it is a rubber stamp signature.

Q Have you seen that rubber stamp used at the track for Mr.Greenberg's signature from time to time?

A Only in an emergency.

Q I am sorry, Ma'm?

A Only in an emergency is that used.

MR.KINGHAM: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. FAHRINGER:

Q Showing you Government Exhibit 29, Miss Coyle, the words "Leon Greenberg" that appear at the bottom of that check, that would not be machine signed, would it?

A No,it would not.

MR. FAHRINGER: That is all.

MR.KINGHAM: Okay. I have nothing further.

Thank you, Miss Coyle.

THE COURT: Thank you very much. You are excused.

(Witness excused.)

MR. FAHRINGER: May I step out for a moment, your Honor?

THE COURT: Yes.

(Pause.)

MR. FAHRINGER: May it please your Honor, I wonder if we could take our luncheon recess now? I have another witness scheduled at two o'clock.

THE COURT: All right. We will recess now until two o'clock.

(Jury left the courtroom.)

(Luncheon recess.)

Discussion.

AFTERNOON SESSION
2:00 p.m.

(In the robing room)

THE COURT: Mr. Fahringer, we have had six character witnesses from widely dispersed fields, including people in a position to know this man's reputation and all of them have been upstanding members of their various communities.

Under the circumstances, I think thatin the interests of avoiding any undue delay and unnecessary and cumulative evidence I would suggest that we have no further character witnesses other than perhaps one more if you have planned on having any more this afternoon, so that you will have the opportunity to select the person that you think is most desirable in the interests of the defendant.

But I have checked on the applicable law just to verify my recollection in the circumstances, and I find that I have already exceeded the number that have been considered allowable.

United States v. Zane, 495, F 2d 683, at 698, decided by the Second Circuit in 1974, in which certiorari was denied, at 419 U. S. 895, in 1974 had an attack on the Court's ruling limiting to five the number

of character witnesses to be called before the jury, and the Second Circuit has ruled that that was well within Judge Wyatt's discretion.

Other occasions that we have reached and gone beyond the point of fair evidence on a particular matter such as character evidence are to be found in Michelson v. the United States, 335 U. S. 469, at 480, and rule 403 of the federal rules of evidence which now apply.

I don't want to curtail your proof unnecessarily. I know that you have worked diligently, but I think that in the interests of moving the case along that we ought to take on just one more.

Now, what are your thoughts on the subject?

MR. FAHRINGER: Well, your Honor, I excused some, Judge, because that's really -- I had some standing by, because I wanted to fulfill my obligation to you interms of not having any gaps in the proof.

Let me be frank with your Honor: This afternoon I had staggered some. I had about ten more character witnesses, but, your Honor, I have let five of them go and I had one scheduled -- I thought that I could fill up til 3 o'clock -- I had one scheduled for 3 o'clock, but, your Honor, I want to

tell you that with that situation I have one more fact witness to put on and I'd like to introduce into evidence some of the minutes of the board of directors and the executive meeting which I would welcome a chance maybe to discuss here out of the presence of the jury, and then I was going to rest, your Honor. So you know exactly what my plans are for the afternoon.

And the only thing I could say, if your Honor would indulge me to this extent, that if I could wait till that witness arrived at 3 o'clock, and then put her on, why, --

THE COURT: Another character witness?

MR. FAHRINGER: Yes. And then I tell you, that would complete my case, your Honor.

THE COURT: Well, I don't think there is anything so earth shattering that we can't accommodate one more character witness, and what we will do is to let you go forward and hopefully this person will show up before 3 o'clock.

MR. FAHRINGER: I hope, your Honor. I tell you what it was --

THE COURT: No objection to that, is there, Mr. Kingham?

MR. KINGHAM: None at all, your Honor.

THE COURT: The only difficulty is, I had hoped to put you both into the arena today and get your summations in. What are we going to do about a late session today? If that is the way it's going to go, and the case is summed up today, I'm perfectly willing to go over until Monday.

But I'd rather not find myself in the posture of depriving counsel in the succeeding case of the opportunity to try their case expeditiously by putting the whole business over till Monday.

MR. KINGHAM: May I make a suggestion, your Honor, if I may? I don't even know if this has to be on the record.

THE COURT: Off the record.

(Discussion off the record)

(In open court: jury present)

MR. FAHRINGER: May it please your Honor, Mr. Hoffer.

H Y M A N H O F F E R, 45 Dwyer Avenue, Liberty, New York, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Mr. Hoffer, how old are you?

A 71.

Q Are you married, sir?

A Yes, I am.

Q Where do you work?

A I'm employed at the Grossinger Hotel.

Q How long have you been employed there?

A 30-some-odd years.

Q What is your family relationship to Paul Grossinger?

A He's a nephew of mine.

Q He is your nephew?

A He is my nephew.

Q What position do you occupy at the hotel?

A I'm the assistant maitre d'.

Q Now, in the hotel, I take it -- can you tell us what the maitre d' does or is?

A Well, he seats people; he's in charge of some of the dining room captains and waiters, waitresses, busboys.

Q Would it be fair to say that he's the top man in the dining room?

A Well, I'm the assistant.

Q No, the maitre d'.

A The maitre d' is and I'm the assistant.

Q You are the assistant?

A Yes.

Q Now, do you recall in 1970 any golf outings that were sponsored by Monticello Raceway?

A Yes, sir.

Q And did you, in 1970, and I invite your attention specifically to the months of July and August, did you receive calls from the Monticello Raceway?

A Yes, I did.

Q And did you then make arrangements for people to eat in the dining room?

A Sometimes they would eat in the dining room. Many of them ate in the clubhouse at the golfcourse, or some would eat at the poolside area, some of the women and children.

Q There were three areas where food would be served, the main dining room, then where else?

A In the golf clubhouse.

Q And the third place?

A The poolside area.

Q All right.

Now, at these outings, do you recall, and again I ask you whether in 1970, whether wives and some of the children attended them?

A Yes, they did.

Q Were there occasions when the men ate in the dining room?

A Sometimes.

Q And incidentally, if they ate in the dining room, was a slip made up for them or any kind of a record?

A No, it was not.

Q Were there other occasions that you can tell us about when horsemen came over and ate in the dining room, for instance, on a Sunday night?

MR. KINGHAM: Objection, your Honor.

THE COURT: No, we aretalking about a Sunday. Go ahead.

Q Were there occasions on Sunday evenings when men came over?

A Sometimes, yes.

Q Were these horsemen?

A Sometimes, yes, horsemen.

Q From the raceway?

A Yes, sir.

Q Were they charged on those occasions?

A No, they were not.

Q Now, Mr. Hoffer, do you recall the bar mitzvah of Andrew Greenberg?

A Yes, I do.

Q Were you at that function?

A Yes, I was.

Q And do you recall how many people were there?

A Well, my best estimate would be in the neighborhood between 200 and 250.

Q What is the basis of that estimate?

A Because of the size of the room it was held in.

Q Now, was that an afternoon affair?

A Yes, it was.

Q May I ask you this,from your experience of 30 years at Grossinger's, is an afternoon affair less expensive than an evening affair?

A It sure is.

Q Is that because the facilities --

MR. KINGHAM: Objection, your Honor.

MR. FAHRINGER: I withdraw that.

THE COURT: Why is the afternoon affair less expensive?

THE WITNESS: Well, just because it is an afternoon rather than an evening, on a Saturday.

Q I show you Defendant's Exhibit I for identification, and as you whether you know of the orchestra identified in that document.

A Yes,I do.

Q What is the name?

A Danny Leroy Orchestra.

Q Did the Danny Leroy Orchestra play at the Greenberg bar mitzvah?

A Yes, he did, sir.

Q Was that in the afternoon that he played?

A Yes,he did.

Q Do you know how many members of that orchestra played?

A Well, I noticed on the paper, eight persons, but --

MR. KINGHAM: Objection, your Honor.

I will withdraw it.

A I wouldn't know exactly. I would say in the vicinity of eight people.

Q All right. Do you happen to know from being at

the bar mitzvah whether there was an entertainer there, a magician?

A Yes, there was.

Q Did he perform?

A Yes,he performed for the children.

Q Now, did there come a time in the afternoon of November 7th, the afternoon of the bar mitzvah, thatyou had a conversation with Leon Greenberg?

A Yes,I did.

Q Will you tell us what he said to you and what you said to him?

MR. KINGHAM: Objection, hearsay.

THE COURT: Overruled.

MR. KINGHAM: Your Honor, may I send up a note?

THE WITNESS: Can I answer that question?

THE COURT: Just wait a minute.

THE WITNESS: I am sorry.

THE COURT: I think probably that is a little too broad. They might have been talking about the Giant football game which would make it improper. Maybe that is what the objection is.

MR. FAHRINGER: All right, your Honor, I will be a little more specific.

MR. KINGHAM: It is not, your Honor.

THE COURT: Another point?

MR. KINGHAM: Yes.

THE COURT: All right, we will wait a minute.

(Pause.)

THE COURT: Well, suppose you indicate alittle more closely what the area of the inquiry is,before I rule on the subject,by questions.

Q Was there a discussion about gratuities between you and Mr.Greenberg?

A Yes, there was.

THE COURT: You may proceed.

Q Will youtell us what he said to you and what you said to him?

A Mr.Greenberg came to me and said, "Hymie, I would like your advice. I am very pleased the way the function was and how it was run. I would like to take care of some of the people that were contributing towards the affair."

And I suggested to him that he speak to Dave Giver, who was running the affair, that he would give him the best advice toward that end.

Q Now,DaveGiver, is he the maitre d'?

A Maitre d', yes.

Q After that, did you see Mr.Greenberg go to

Dave Giver?

A Yes, I did.

Q How far away from you were they?

A Maybe 15 feet from me.

Q What did you observe happen?

A Well, he spoke to Dave Giver a few moments, and then I saw him reach in his pocket and take out some money to give him, and gave it to Dave Giver.

Q That was on November 7, is that right?

A That was towards the end of the bar mitzvah.

Q Now, in terms of gratuities, Mr. Hoffer, do you know how many captains -- well, maybe we ought to -- will you tell us what the organization is. The maitre d' is the man in charge?

A That's right.

Q Under the maitre d', who is next?

A I am next. Then there are four captains.

Q There are four captains?

A Four captains.

Q At a bar mitzvah, would there be four captains?

A Well, no. In that size bar mitzvah I would think they used about two.

Q Two captains?

A Two captains.

Q In terms of your experience of being an assistant maitre d' for some 30 years, would you tell us who normally get gratuities at one of these affairs?

MR. KINGHAM: Objection, your Honor.

THE COURT: Overruled.

A Well, it would be the waitresses to begin with, the busboys, and naturally the captains.

Q Would the maitre d' get something, too?

A The maitre d' possibly would.

Q If you are running a routine function where they are paid, you call it a function rate of $35 per waiter --

MR. KINGHAM: I object, your Honor, to this question, the form.

THE COURT: Let's hear the question.

Q A $35 flat rate, function rate -- do you know what I am talking about? Is there such an arrangement?

A Well, I could explain that.

THE COURT: No, he doesn't want you to explain it. He wants to know if you know what he is talking about, just yes or no.

THE WITNESS: Well, $35 is probably the rate paid to a waitress or a busboy for a function, according to the union pay contract.

Q Is Grossinger's a union hotel?

A It is a union hotel.

Q Now, if the bill here showed a flat rate of $35 a function rate, would it be usual for a person to pay gratuities to the waitresses or the waiters or busboys who got a flat $35 rate?

A Not necessarily.

MR. KINGHAM: Objection, your Honor.

THE COURT: Objection is overruled.

A Not necessarily.

Q Can you tell us, if you will, please, from your experience, what would be the normal gratuity for a bar mitzvah, for a captain?

A I really don't know the contract on that.

Q No, no, I mean --

A I don't know, but it would usually run about $50.

Q And what about for the maitre d'?

A Well, that's optional. There is no set rate for that.

MR. FAHRINGER: I have no further questions.

THE COURT: Any cross?

MR. KINGHAM: A moment, your Honor.

(Pause.)

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Mr. Hoffer, would you look at Government Exhibit 8, please, and do you recognize this as a ledger card like the type that is kept in the cashier's office of the hotel?

A Yes.

Q You have seen cards like this before around Grossinger's, haven't you?

A Yes.

Q Do you recognize the type of blue slip that is attached to the front of that card?

A Yes, I do.

Q And what type of a slip is that?

A That is a dining-room slip.

Q That dining-room slip has a signature on it, does it not, it appears in ink?

A Yes, it does.

Q Does that appear to be Dave Giver's signature?

A No, it is not.

Q Do you know whose that is, sir?

A I really don't know.

Q And that dining-room slip indicates 312 guests, Leon Greenberg bar mitzvah, isn't that correct?

A That is what it says.

Q Let me show you -- before I do that, let me askyou this, Mr. Hoffer, after you saw Mr.Greenberg give some money to Mr. Giver, didyou get any money from Mr. Giver?

A No.

Q And showing you Government Exhibit 9, which is a payout slip or a receipt from Grossinger's, you recognize that as a type of a receipt that might be used in the cashier's office?

A Yes, it is.

Q And that indicates, does it not, a payment of $1200 to someone?

A Yes, it does.

Q And it says "bar mitzvah grat." which I think we can presume means gratuities?

A That is what it says on there.

Q And it is dated November 8, 1970, is it not?

A That's right.

Q You don't know anything about that slip, do you, sir?

A No, I do not.

MR. KINGHAM: Nothing further,your Honor.

THE COURT: Anything else?

Discussion.

MR. FAHRINGER: Nothing further,your Honor.

THE COURT: Thank you very much, Mr. Hoffer. YOu are excused.

(Witness excused.)

MR. FAHRINGER: Excuse me, your Honor, could we approach the bench?

THE COURT: Yes.

(At the side bar.)

MR. FAHRINGER: Your Honor, I have a character witness. It is not the one I was waiting for at three, but I would be prepared to put that person on and then not -- well, I guess I had agreed that I wouldn't call the one at three, in any event. I guess what I am asking your Honor is to permit me to put that character witness on.

THE COURT: In other words, this is the only other one you want to put on.

MR. FAHRINGER: That is correct.

THE COURT: I have no objection to having this additional witness called as a character witness.

MR. KINGHAM: Nor have I, your Honor.

THE COURT: Now, as I understand it, so that we have the procedure on the record, upon completion of this witness' testimony, it is the intention of the defendant to offer certain books and records of theRaceway in evidence

and in order to deal with questions of law that may be involved in that ruling, the ruling will by consent of both sides, be reserved, the defendant will rest its case, the Government intends to rest its case, and the jury will be excused until Monday morning, when we will have summations and charge.

However, the ruling is made in respect of the documents that have been offered in evidence; they will be deemed to have been received, if allowed, as part of the defendant's case before either side rests. Is that correct, gentlemen?

MR. FAHRINGER: That is right, your Honor.

MR. KINGHAM: I would request, your Honor, that when the exhibits are offered, that the documents merely be marked and offered rather than identified for the jury under these circumstances.

THE COURT: Yes, they will be offered only in the following way: Mr.Fahringer willsay, "I offer in evidence exhibits so and so, so and so, so and so," without any description whatever, and I will say, "I reserve decision in accordance with the record as heretofore made."

All right.

MR.KINGHAM: Thankyou, your Honor.

MR. FAHRINGER: All right.

Discussion.

THE COURT: Have you got tabs to put on?

MR. FAHRINGER: I will have to do that.

THE COURT: You do that.

MR. FAHRINGER: Okay.

F A T H E R A L F R E D I S A C S S O N, St.Albert's Junior Seminary, Middletown, New York, called as a witness by the defense, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FAHRINGER:

Q Father, may I askyou, where is your parish?

A I live in St. Albert's Junior Seminary in Middletown, New York. It is a seminary high school. I prepare students for the priesthood.

THE COURT: You don't have a parish of your own?

THE WITNESS: No, I don't, Judge.

Q Do you teach in that institution?

A Yes, I teach and I am the principal of the seminary.

Q What about your educational background, where did you go to school?

A I went to St.Bonaventure University for my Bachelors and Masters degree,Bachelors was in philosophy, Masters was in history, and then I studied theology at Whitefriars Hall in Washington, D.C.

Q May I ask you what order you belong to?

A I belong to the Carmelite Fathers.

Q Now, have you held any positions within the Church that you can tell us about?

A Right now I am the principal of the seminary, previously I was the Superior of the seminary. I was Assistant Provincial in the Carmelite Fathers. I was a delegate to the General Chapter in 1969, a delegate to the Provincial Chapter three times, and I was also the editor of the Scapular Magazine, oh, 1959 to 1964.

Q How long have you known Leon Greenberg?

A Since 1969, almost six years.

Q During that period of time have you had the occasion to speak with other persons who know him?

A Yes.

Q And as a result of those conversations, have you been able to form an opinion as to what his reputation is in the community for truth and honesty? Can you answer that yes or no?

A Yes.

Q What is that reputation?

A Well, judging from, you know, the friends that he has, the amounts of awards and honors he has received from the community --

MR. KINGHAM: Objection, your Honor.

THE COURT: Yes, Father, that is not the

criterion. You are not here to judge this man nor are you here to give a personal opinion.

What the law looks to from a character witness is to report on his general reputation in the community -- general reputation, and Mr.Fahringer has asked you, do you know what his general reputation is, andyou said yes. Now you may say what that general reputation is in respect of truth and honesty.

Q Good, bad --

A No, very good. He is a reliable person.

MR. KINGHAM: Objection.

I will withdraw that.

MR. FAHRINGER: Your Honor, may I ask one other question?

THE COURT: Sure.

Q Father, were you at the bar mitzvah that Mr. Greenberg had for his son?

A Yes, I was.

MR. FAHRINGER: Thank you.

MR. KINGHAM: May I, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. KINGHAM:

Q Good afternoon, Father. I am Barry Kingham. I

represent the Government in this case.

A Good afternoon.

Q Now you have known Leon Greenberg since when?

A 1969.

Q Do you know that he is the president of Monticello Raceway, do you not?

A Yes, I do.

Q This is not the first time that you have testified in a trial in this courthouse, is it?

A No.

Q And indeed, have you testified before as a character witness for persons connected with Monticello Raceway?

A I think I have to qualify that answer. I testified for a friend who happens to be a stockholder in the Raceway.

Q And was that Mr. Ben or Julius Slutsky?

Q Ben Slutzky.

MR. FAHRINGER: I will object to this, if your Honor please, I don't see the relevancy.

THE COURT: Well, we are not going any further than this?

MR. KINGHAM: I am not, your Honor. Not on

that line.

THE COURT: All right.

Q You testified in that trial in 1973, is that correct?

MR. FAHRINGER: Same objection, your Honor.

THE COURT: We can identify the time. That far I will let him go at the moment.

A Yes, I did.

Q Now, prior to the time that you testified in that trial, do you recall whether or not St.Albert's had received any charitable contributions from Monticello Raceway?

A It had.

Q And do you know how much St.Albert's had received from Monticello Raceway during the year 1972?

A I don't know offhand. I didn't come prepared to answer that, but our records would indicate this.

THE COURT: Approximately how much?

THE WITNESS: At the time we had Joe Namath night, which we supplied Joe Namath to the Raceway in return for a portion of the admission to the track, it was about $5000. I would say in subsequent years it was a thousand or two thousand dollars.

Q And do you recall that you testified in that

trial on about January 5, 1973?

MR. FAHRINGER: Same objection, your Honor.

THE COURT: Overruled.

Q Do you recall testifying in the Slutsky trial January 5, 1973?

A I do.

Q Do you recall whether or not thereafter you received any charitable contributions from Monticello Raceway?

A We have every year, so I -- I couldn't really -- I didn't come prepared to state when we have received contributions.

THE COURT: Give us the approximate amount you received thereafter.

THE WITNESS: Since the year 1969, which was very --

THE COURT: No, he is not talking about that.

THE WITNESS: About two thousand dollars a year, each year.

THE COURT: He is talking about a specific period of time after an event. How much was the amount after that event?

THE WITNESS: I am sorry, would you ask the question again, please?

THE COURT: The event was the trial where you

were a witness.

MR. KINGHAM: January 5, 1973, your Honor.

THE WITNESS: I would presume, usually the checks were a thousand dollars.

Q I want to show you Government Exhibit 34 for identification and ask you if that refreshes your recollection as to when you received a contribution.

A Yes, it does.

Q Isn't it a fact that you received a thousand dollar contribution on January 8, 1973?

A Yes,that is the date of the check.

Q Thank you.

Father Isacsson, at the time that you received that contribution, do you know whether Leon Greenberg was president of the Racetrack then?

A Yes, he was.

Q And at that time Mr. Slutsky was the larger shareholder of the track, was he not?

A I knew at the time he was a shareholder, I did not know how large.

MR. KINGHAM: I have no further questions, your Honor. Thank you, Father.

REDIRECT EXAMINATION BY MR. FAHRINGER:

Q Father, have you received contributions every

year from the Monticello Raceway for your school?

A Every year since 1969 which was our first meeting with Mr.Greenberg.

Q Would that in any way influence your testimony here?

A No, it wouldn't.

RECROSS-EXAMINATION

BY MR. KINGHAM:

Q Is it your testimony, Father, that the contributions you have received are from the Raceway, not from Leon Greenberg personally, is that correct?

A That is correct.

MR. KINGHAM: Thank you very much. Nothing further.

THE COURT: Thank you very much. You are excused.

(Witness excused.)

MR. FAHRINGER: Your Honor, at this time the defense will rest with the exception of offering Exhibits W, X, Y and Z for the Court's consideration.

MR. KINGHAM: Your Honor, subject to the offer and ruling on those exhibits, the Government rests.

THE COURT: The Court will receive those exhibits as part of the case in chief to the extent that it may

be allowed a consideration of the legal questions, and we need not detain the jury while we talk about the law on that subject.

Ladies and gentlemen, that completes the record that is being made and has been made in this case.

The next step in the case will be for the lawyers to collect the evidence in their own fashion and argue to you what they think the evidence showed.

Following that, the Court will instruct you as to what the legal principles are in a case of this kind.

In view of the hour, and to avoid a late session at the end of a week with so many ladies whom I am sure have shopping problems for Friday afternoons and Saturdays, we will postpone and continue the trial until Monday morning at 9:30, when we will hear the first of the summations.

In order that we may proceed expeditiously on Monday, I have fixed an earlier meeting date for the commencement of the proceedings in this case. I hope those who come from a distance will try and regulate their transportation so that you can get here and so that we can start on time.

Now, in the meantime, I will ask you to keep an open mind on this case until you have heard all of the arguments and the Court's instructions as to the guiding

legalrules.

Don't let this case become a subject of discussion or consideration by any of you with each other or with anybody else. It isn't a subject that anybody at home or elsewhere has any interest in as far as you are concerned until you have completed your entire jury duty in this case.

Therefore, please remember what I told you about news media, television, and any outside considerations. Reposed in your mind is the evidence that you have heard and the documents that you will be able to call for to see in order to refresh your recollections as to what was offered in evidence in a documentary way.

Again, I repeat, please do not discuss this case at home, certainly not on the subways or in the elevators, don't talk to yourselves about the case,or with anybody else. And I will see you hopefully all refreshed and ready to complete your duties early next week starting Monday at 9:30.

Good afternoon.

(Jury left the courtroom.)

THE COURT: All right, gentlemen, the business of the afternoon now is the consideration of the offer of Exhibits W, X, Y, Z. Four exhibits. What do those exhibits contain?

MR. FAHRINGER: May I tell you, your Honor, that they contain the executive committee meetings and the board of director meetings.

I would like, if it please the Court, to offer all of those, your Honor, the entire minutes, covering -- these cover 1970 and 1971, and your Honor, let me tell you why I think they are relevant.

Incidentally, your Honor, I should tell the Court that Mr. Kingham and I have a stipulation on their authenticity. I, I believe, will object on the grounds of relevancy, but we are agreed that they are the minutes of the corporation and the executive committee.

And, your Honor, there is one other set of minutes that I would like to offer which are a part of these except they are not contained in these volumes, and I will identify those exhibits, if I may, to make it easy, ZZ.

Those minutes, your Honor, contain the report in 1974 of these bills that are the subject of this indictment. And I feel, your Honor, that they are

relevant in view of some of the issues that were raised inthe course of this trial.

Now, in particular, your Honor, I think that the executive meeting on November 2nd deals with the 25 per cent discount, and indicates that the check, that $4856.16 which covers the horsemen's bills for July and August, was negotiated with Mr. Grossinger and was received and that the check was paid on that date.

I think that's important, your Honor, because you recall that Miss Coyle testified that she had prepared the check on the 29th, and that her understanding was that it had to be available for the executive meeting; we now have the executive minutes which show that that subject was taken up and decided in the fashion that I have described to the Court.

THE COURT: Without meaning to interrupt you, how could a negotiation of the defendant with himself under the charge laid in the first count of this indictment be significant on any issue in this case?

MR. FAHRINGER: Well, I will tell you why I think it is, your Honor. Of course, the essence of the charge is fraud, and that this was done deceptively, and here it is being brought up at the executive meeting,

they are talking about a 25 per cent discount.

Now, you know, Mr. Kingham will argue differently but I think I should be allowed to argue to the jury, that if the bills are fictitious and fraudulent, what's all this to-do about getting the 25 per cent discount for the raceway.

THE COURT: I know, but how could -- let's substitute for the name Paul Grossinger the name of Leon Greenberg. How could Leon Greenberg's arrangement with Leon Greenberg for a 25 per cent discount be of any significance in this case? That's what the charge is in the first count, that there was a conspiracy here, and this was a discussion between two of the members charged in that alleged conspiracy.

MR. FAHRINGER: No, your Honor, I am sorry. The minutes show that Mr. Grossinger wasn't present. He wasn't at the executive meeting, your Honor.

THE COURT: That makes it even worse.

MR. FAHRINGER: Well, your Honor, it was between -- there areno co-conspirators at this meeting.

THE COURT: I thought you started out -- maybe I shouldn't interrupt you -- by telling me that Mr. Greenberg had negotiated with Mr. Grossinger for a 25 per cent reduction of a bill.

Discussion.

MR. FAHRINGER: I am sorry, you are right. That's true. I misunderstood, your Honor. But the executive meeting that I wanted to introduce in evidence was a discussion among the executive committee that he had been successful in that, an open discussion of the bill, and in my judgment I think the minutes can be interpreted to mean that it was all done openly and without any concealment and they wouldn't ordinarily have had to discuss these things at the executive committee.

To that extent, your Honor, I think it does bear on intent. It certainly is --

THE COURT: Let me see the minutes.

MR. FAHRINGER: Your Honor, if I might, because I do not have the originals, but there is a photocopy if I could hand that up to you.

MR. KINGHAM: your Honor, I am sorry, but I object to the use of a photocopy. I would insist that the Court examine the original minutes and that the original minutes be quoted from. They have been in the government's possession, they were subpoenaed and I might add I have never heard of any minutes for 1974.

THE COURT: '70.

MR. KINGHAM: I know, your Honor. I am adding one other thing. Mr. Fahringer is talking about some

other minutes in 1974. The federal grand jury in this district subpoenaed all of the minutes from 1968 through 1974. Now Mr. Fahringer tells that there are minutes for 1974 that re not in the bound volumes.

MR. FAHRINGER: I am sorry, your Honor, I misspoke, I meant 1975. I misspoke. I apologize. Here are the original minutes, your Honor. I have no objection to you seeing those. It's at the bottom of the page, page 2 (handing).

THE COURT: Don't worry about the tab, you can take care of that later.

All right, you go ahead. Maybe I should take one moment to read what you are talking about.

MR. FAHRINGER: All right.

(Pause)

THE COURT: Where are these admonishments of the executive committee previously? Are they in an earlier set of minutes?

MR. FAHRINGER: Yes, your Honor.

Let me say, I am virtually certain they are. I know the matter was discussed either in the board of directors of in the executive committees.

MR. KINGHAM: If I may be heard, your Honor. I have examined all of those books word for word,

line by line and indeed it would have been an area of cross-examination had a certain witness testified here.

THE COURT: Let Mr. Fahringer present his position in full. You just make notes and I will hear you.

MR. KINGMAN: Fine, your Honor. Thank you.

MR. FAHRINGER: Your Honor, again keeping in mind that I feel all ofthe minutes are relevant during this period of time of the indictment, however, certainly specifically, I think theminutes relating to the resignation of Mr. Grossinger are relevant

Now, the reason I think that maybe more from our standpoint is that I got the impression when Mr. Kingham was examining one of the witnesses about the letter being placed in the safe, and the check being placed in the safe, that perhaps the resignation was suppressed. Well, your Honor, I certainly think I have the right to show the jury now that the resignation was fully brought up at the meeting, it was acknowledged, accepted, and that it was openly discussed.

In the event any jurors are left with the impression that this was kept from the board of directors I feel that I have a right to correct that.

And of course, your Honor, finally,as you

know, I said in my opening that when we were notified of Mr. Grossinger's resignation, there was an investigation conducted and an audit was made of the bills, and a determination was made that the check should not be cashed because the corporation -- and I think this is important if there is going to be talk in this lawsuit as I expect there will be about the company being a victim -- that the company -- I don't pretend, your Honor, to be quoting the minutes so don't misunderstand me, but that the company had received the services they had paid for and for that reason they rejected the return of the funds for the reasons which were alleged to be the basis of the reimbursement of that money.

So that I certainly think that those portions, perhaps moreso than the other portions of the minutes, are important to be before the jury.

One other thing, your Honor, that I --

THE COURT: So the record is entirely clear, you have offered as Exhibit W that portion of the minutes of a meeting of the executive committee o Sullivan County Harness Racing Association, Inc. held on the second day of November at 2 p.m. in the afternoon of that day, which read as follows:

"Mr. Greenberg discussed the Grossinger bill

for all events, including parties for horsemen, golf tournaments, etc., and stated he had negotiated a 25 per cent discount, in accordance with the admonishments of the executive committee previously, and that the entire bill had been paid in full."

Now, what's the next -- what is Exhibit X?

MR. FAHRINGER: But, your Honor, I'm offering, you know, all of the minutes.

THE COURT: Well, I'm not accepting any blanket offer of minutes unless it relates exactly to the subject matter of what we are discussing. I'm not interested in the charitable contributions of this organization or the fact that they hire or fire people and accept horse trainers and decide on feed stocks and various other irrelevant characteristics of the minutes.

MR. FAHRINGER: Your Honor, may I just mention one other reason why I think generally that the board of directors minutes are important for 1970. There is repeated references throughout there of the need to entertain the horsemen and to promote activities for them in order to encourage their coming --

THE COURT: That doesn't mean that there is a need to entertain them at Grossinger's, and anything that deals with Grossinger's is one thing. Anything that goes off in the stratosphere or in other directions is another thing. I won't accept anything that does not relate to the subject matter at hand, and as far as the subject matter at hand is concerned, I have not yet ruled on the admissibility of the identified areas.

Discussion.

MR. FAHRINGER: your Honor, may I just mention one thing to the Court. At one point, I don't think this is inappropriate, and I don't suggest that Mr. Kingham is bound by this, at one point Mr. Kingham spoke to me about stipulating all of the minutes in for '70 and '71.

Today I spoke to him about that and he indicated that he had changed his mind.

THE COURT: That is a choice that he would have to make voluntarily and announce it to me. I'm going only on what has been offered at the present time, and what has been offered at the present time, to the degree that it bears any verbal reference to the subject at hand --

MR. FAHRINGER: What I would like, your Honor, is a few moments just to collect my thoughts, and if I may, I don't want to intrude upon the Court's time, but if I could just go through them, then I could make a better representation to you. Because I had just assumed that we would be putting in all of '70 and '71.

THE COURT: All right. Take your time.

MR. FAHRINGER: May I take that time now, your Honor?

THE COURT: Take your time.

Discussion.

I just want to close out this on a note of understanding of what is here. I take it that the only reference in this exhibit W to the Grossinger bill is the one that I have already quoted in the record. Is that right, the only specific reference?

MR. FAHRINGER: I believe you are correct, your Honor.

THE COURT: All right. I think I should also add to what was already said that at the meeting in question on November 2, 1972, Mr. Leon Greenberg acted as the secretary, and I take it prepared those minutes.

MR. KINGHAM: Your Honor, if I may be heard, I think that Mr. Fahringer would stipulate with me as well, at least for purposes of this argument, that with respect to all board of directors and executive committee meetings minutes that might come into issue here, the system was that Mr. Greenberg would act as secretary for all meetings, would take notes, would then come out of the room and dictate his notes to Irene McCullough who would type them up, and would then prepare the minutes, that the minutes were then recorded on to a cassette recorder of some kind and would be played back at the, for example, an

executive committee meeting would be played back at the next board of directors meeting, so that they would know what had happened. That was the system. And I think if your Honor looks through, you will see Leon Greenberg has signed all of those documents.

MR. FAHRINGER: Your Honor, the minutes have been approved as accurate.

THE COURT: Yes.

MR. FAHRINGER: Your Honor, will you hear me on another portion I have located here. I didn't want to interrupt your reading in May of '74 I have reference.

THE COURT: May of '74?

MR. FAHRINGER: Yes, that is the resignation, your Honor, which the government has offered in evidence.

THE COURT: Are we through now with the 1970 executive minutes? Let's take them one by one. I've got Exhibit W here. Is there anything else in Exhibit W that you want to offer specifically?

MR. FAHRINGER: I have nothing more specific than that; my position is the entire minutes should be before the jury, and you have my position on that, and I haven't got anything more specific --

THE COURT: What concern would the jury

have of Ernie Morris of Saratoga Raceway and Ted Zornow of the United States Trotting Association? That is part of the entire minutes. This omnibus offer of wholly ireelevant matters seems to me to be inexcusable, frankly.

Unless there is something which bears directly or even indirectly on the subject of the Grossinger bill and the bar mitzvah event or any aspects of the same, I see no reason for accepting anyting in these minutes. They would be diverting and confusing.

MR. FAHRINGER: Your Honor, we are prepared at this point then to respond to the Court's inquiry, that the other specific offer we have out of allof the exhibits that hav e been marked is the one which would be ZZ. That is -- may I read it in the record? Then I will hand it up to the Court for you to look at. This is the board of directors meeting, your Honor, that took place in May of 1974.

THE COURT: What date, '74?

MR. FAHRINGER: Yes, '74.

THE COURT: What day of the week?

MR. FAHRINGER: On May the 1st, your Honor.

"Reference was made to a letter from Paul

Grossinger. The matter had been turned over to the attention of Jack McBride and Irving Rubenstein. After a complete in depth study of the situation both Mr. Rubenstein and Mr. McBride found all documents to be in order."

Now, your Honor, again, if you will just hear me for a second on this, much has been made of this resigna'ion, and a part of the letter of resignation is in evidence, which even though your Honor deleted portions, the balance is still self-serving.

It seems to me that I have a right to argue to the jury that when this resignation was received, we on our end did investigate the matter. I'm not urging thatwe go into the full extent of the investigation, but I think I'm entitled to argue to the jury that we looked into it.

And the reason the check wasn't cashed or it was rejected was because of, not Mr. Greenberg at this point, but the board of directors, and to that extent I shouldn't be, if you will please me, your Honor, I shouldn't be vulnerable to this sort of argument by prosecution in summation, that they sent the check back and the corporation never did anything with it at all: they never cashed it, they never even took the money

back when it was tendered back to them.

I think I'm entitled to argue the reason for that, since they have put the documents in --

THE COURT: Can't you argue that because of their high-minded moral position they didn't want to take money that didn't belong to them?

MR. FAHRINGER: But, your Honor, I think it should be from the board of directors, not from Mr. Greenberg.

THE COURT: That's just complete hearsay on the outside, and on the basis of considerations which may have no relevancy at all t o the issues in this case.

MR. FAHRINGER: But, your Honor, isn't the same true of the other side? I mean we are stipulating --

THE COURT: No, it isn't. The thing that is true on the other side is that --

MR. FAHRINGER: May I interrupt you for just a second, your Honor?

THE COURT: Mr. Grossinger claims that he does not want to profit by what occurred in 1970.

MR. FAHRINGER: That is self serving, your Honor. He's saying himself, he's saying to the

corporation, he's saying, "Look, I think, we rationalized these as a profit at one time; now we have concluded we are not entitled to this money. We are returning it to you."

I think the corporation, since they are designated the victim of this fraud, I think I really should in all fairness, have the right to come back and say, "Well, we reached a similar conclusion." At least it's a standoff --

THE COURT: You mean I'm to take their view as to whether or not Grossinger is correct or wrong?

MR. FAHRINGER: Your Honor, I objected tothe Grossinger letter on the grounds that this was just him saying it was wrong, a self serving declaration.

THE COURT: The Grossinger letter, to the extent it was received, merely shows that he, in 1970, received money which he returned in 1974.

MR. FAHRINGER: I think, your Honor, the letter, the portions that are still in there, say more than that.

THE COURT: What, specifically? What more specifically? I thought everything was excluded.

MR. FAHRINGER: May I see the letter?

Discussion.

THE COURT: If everything is not excluded, I will still exclude it.

MR. FAHRINGER: Of course, it's been read to the jury.

THE COURT: That can be rectified too.

MR. FAHRINGER: Your Honor, listen to this: "We have since concluded that the above charges were improperly billed and paid to us by Monticello Raceway."

THE COURT: That's their opinion.

MR. FAHRINGER: I know, your Honor --

THE COURT: You can't by the board of directors say that they were properly billed. This man is talking about himself.

MR. FAHRINGER: We are talking about ourselves, too, when we say --

THE COURT: He's saying that Grossinger's hotel did this thing wrong. He's not saying that what you are doing is wrong.

MR. FAHRINGER: Well, he's saying, "We were improperly billed, and paid to us by Monticello Raceway, and we, accordingly, enclose herewith a certified check in the amount of $4856."

THE COURT: What is the significance of that? Those are the words. But what is the significance of

that?

MR. FAHRINGER: Your Honor, let me just read it once more, because maybe I misinterpreted it. It seems to me he said -- this is S. H. Grossinger, Inc., by Paul Grossinger:

"We have since concluded that the above charges were improperly billed to and paid to us" -- "paid to us."

THE COURT: That is right: if they were improperly billed they were improperly paid.

MR. FAHRINGER: By the Monticello Raceway. Your Honor, I think that lends itself --

THE COURT: All right.

MR. FAHRINGER: If you will just hear me.

THE COURT: I think all we are doing here is maintaining our respective positions.

MR. FAHRINGER: Your Honor, let me just say this and then I won't press the thing any further with you, because I consider it awfully important in our case.

What he is really saying is, we should have never received this money. It was wrong. I think that can be argued and I think Mr. Kingham will argue that strenuously to the jury.

Discussion.

I'm left in the position at the same time, the other side of this lawsuit, that I should be able to argue to them, well, we contend that we were properly billed and the funds were properly paid.

THE COURT: Number one, you couldn't prove what you were trying to say, notevne in a stockholders derivative suit, in the way you are proceeding to prove it. And certainly you can't do it in a criminal case.

What you need is somebody who can stand the crucible of cross-examination on what they did and why they did it, and a set of minutes prepared by the defendant as secretary does not establish anything beyond his statementof what other people were doing .

MR. FAHRINGER: Except, your Honor, there adopted by the board of directors.

THE COURT: That may be, too. That may be, too, but I'm telling you even in a stockholders derivative suit you couldn't present those minutes without some evidence.

MR. FAHRINGER: Well,your Honor, I know you know a lot about --

THE COURT: All right. If you can't do it in a civil case, you aer two jumps away in a criminal case.

Discussion.

MR. FAHRINGER: Well, I disagree with your Honor, because I think in a criminal case, where you are primarily concerned with the rights of a defendant, that it seems to me that if the authenticity of these records are stipulated, and they are the records, they're records kept in the ordinary course of business, they're an exception to the hearsay rule, and to that extent I think --

THE COURT: But they're being offered for some kind of a conclusion and not an act.

Discussion.

MR. FAHRINGER: The letter came in the same way, your Honor.

THE COURT: Do you want the letter struck out of evidence?

MR. FAHRINGER: My concern now, your Honor, is this -- the jury heard it. Of course I would likethe letter struck out, but I have got to be frank --

THE COURT: You'd better take a position --

MR. FAHRINGER: Sure I would like the letter struck.

THE COURT: -- at some point.

MR. FAHRINGER: Sure, I would like the letter struck out.

THE COURT: You remember my original suggestion was to say that the check had been returned with a cover letter.

MR. FAHRINGER: I was in accord with that, your Honor.

THE COURT: And then when I clipped the material out, I thought that I had clipped it out sufficiently so as to make it a returned letter.

Now you are reading into it some significance which I don't think appears therein, and I would doubt that it struck anybody else that way, except with due regard

for somebody who wanted to offer the minutes themselves.

MR. FAHRINGER: Your Honor, I tell you in all frankness, you know, I think that the minutes achieve some importance because of the letter. Obviously my ambition to get this in now relates directly to what was said in the letter, and to that extent, I don't see that the Government is that greatly prejudiced by it.

THE COURT: That is a different point. You are appealing to the Government's desire or lack of desire to stipulate, and I will have to let the Government decide what it considers it is so prejudiced by.

Who do you say made this investigation? And where is he? And why wasn't he here?

MR. FAHRINGER: Your Honor, I must tell you candidly that, you know, I was under the impression these minutes were going to come in. Now I realize the '71 minutes weren't stipulated to.

THE COURT: YOu didn't get that impression from me.

MR.FAHRINGER: No, I didn't, your Honor, and I want to be perfectly candid with everyone. Mr. Kingham had agreed to stipulate with me the authenticity of the 1970 and '71 minutes. I assumed --

THE COURT: Did he agree to stipulate that

they would go into the record? He just said that those are genuine pieces of paper.

MR. FAHRINGER: No, your Honor, originalty Mr. Kingham approached me, that they would all be before the jury, all of '70 and '71, and he changed his mind. I am not holdinghim to that. I realize that. That was the proposal to me. I went back and read the entire minutes for '70 and '71 and reported back to him, fine --

THE COURT: At any time from the inception of this trial, did you have any notion that these were going in by consent?

MR. FAHRINGER: I just finished telling you that, your Honor.

THE COURT: You mean to say you came to court here and believing that those minutes in totality were going to be admitted into the record?

MR. FAHRINGER: Mr. Kingham and I had agreed to it, your Honor.

THE COURT: YOu are not answering my question.

MR. FAHRINGER: Yes, I did, your Honor.

THE COURT: Do you want me to reopen this case and have you bring the people in who were supposed to have made this investigation so that they can be put on the witness stand?

Discussion.

MR.FAHRINGER: Your Honor, I tell you -- believe me, I am not trying to be devious with the Court. I think Mr. Kingham will support me on this,that we had agreed --

THE COURT: You just get off the trolley of the minutes and answer me what I am asking you.

Do you want this case reopened so that the people who allegedly made the supposed investigation can be examined and cross-examined?

MR. FAHRINGER: I would like very much to consider that.

THE COURT: When do you want to have them here?

MR. FAHRINGER: May I confer with my client for a moment?

THE COURT: Yes.

(Pause.)

MR. FAHRINGER: Your Honor, we have some serious problems with our proof. Mr. McBride is on trial. I might be able to work that out. May I propose an alternative?

Would you consider striking the balance of the letter and I will withdraw that offer of proof. I realize the jury has heard this and they know of it, but if the last paragraph is struck, at least it seems to me, as I understand the rules, that Mr. Kingham would be foreclosed then from arguing that to the jury, and to that extent it seems

to me I have achieved something.

THE COURT: Arguing what to the jury?

MR. FAHRINGER: I think he would be foreclosed from arguing the language that they have concluded that --

THE COURT: What is the language that you want struck out? You certainly can't object to the fact that there was a cover letter.

MR. FAHRINGER: No, your Honor, and that he resigned; I realize that is a fact before the jury.

THE COURT: Now that, you say, would satisfy all criticism and complaints and any errors that you believe may have occurred as a result of misunderstandings, is that right?

MR. FAHRINGER: I am prepared to commit myself.

THE COURT: Have you any objection to striking out the letter, Mr. Kingham, and leaving it in the record only as a cover letter, returning the check -- no, sending a check, plus a resignation, was sent on that date?

MR. KINGHAM: I have no objection to that,your Honor, with this caveat, that the record remain clear that a copy of the cover letter was sent to Mr.Greenberg personally, because Mr.Grossinger so testified.

THE COURT: That you have no objection to.

Mr. Fahringer doesn't object to that, that a copy of the letter of transmittal was sent to Mr.Greenberg, that a check was sent, and a resignation was sent, and upon that stipulation, both sides -- which I now ask for clarity -- are each of you willing to make? I understand that this whole matter of the offer of the minutes, any implied or express request to reopen the record are all withdrawn: is that right?

MR. FAHRINGER: That is correct.

MR. KINGHAM: No objection.

THE COURT: All right, that is the way the case will be ruled.

MR. FAHRINGER: Except, your Honor, the letter is addressed to theRaceway. I don't want, your Honor --

THE COURT: Mr.Fahringer, the stipulation is perfectly clear that a check with a cover letter to the Raceway was sent, together with a resignation and copy of the letter of transmittal to the defendant, Mr.Greenberg.

MR. FAHRINGER: That is fine, your Honor.

THE COURT: And that is all right with you, Mr. Kingham?

MR. KINGHAM: It is, indeed, your Honor.

THE COURT: The matter is concluded.

I think that that completes the whole subject

matter and the record of the trial is now complete, is that right, gentlemen?

MR.KINGHAM: Your Honor, I believe there is an open question on the 1970 minutes.

MR. FAHRINGER: The executive committee. That has nothing to do with this, your Honor, just the executive meeting of November 2.

THE COURT: Well, you can't have -- the 1970 minutes.

MR. FAHRINGER: That was just where the discount was discussed,your Honor.

Again, your Honor, my point on that is that at least the bill was discussed, and the discount was discussed.

THE COURT: It seems to me, Mr. Kingham, your position here is, as testified and contended for by the testimony of Mr. Paul Grossinger, that Grossinger was told by the defendant that he was authorized to charge the bar mitzvah to theRaceway.

MR. KINGHAM: That is correct, your Honor.

THE COURT: Does this minute of November 2, 1970, contradict that in any way? It seems to me if it doesn't contradict it, why should there be any controversy about it? This merely says that, not only was the thing

authorized but he got it for a 25 per cent discount.

MR. KINGHAM: Your Honor, because the entry in the 1970 minutes for November 2nd indicate several things, which if accepted as fact I believe would permit the defendant here to argue to thejury inferences and facts which really aren't appropriate under the circumstances, and let me explain very briefly: First of all, that statement is a statement made by Mr.Greenberg. It says, Mr.Greenberg discussed and so forth.

THE COURT: Yes

MR. KINGHAM: It attempts to lend the aura of corporate officiality,if you will --

THE COURT: It doesn't give any corporate action. That is the important part of it. It is an historical recital, there is no action been taken on this in the minutes. And for that reason it is no good.

MRL KINGHAM: That's right, your Honor, and the additional problem is that there is no reference earlier in the minutes to any type of an admonishment by the executive committee. It is totally self-serving, if anything it is a false exculpatory statement in furtherance of this fraud because he is trying to cover it up and make it look good to the board, if, in fact, it occurred.

THE COURT: Why don't you argue it that way to the

jury if you think it is --

MR. KINGHAM: I would rather not have the statement in evidence, your Honor. I think it is incompetent evidence. I think thatyou cannot -- what we are trying to establish here is facts. That book does not establish the fact that the statement was made.

THE COURT: Would you have any objection to a statement in lieu of these minutes that could be placed on the record and before the jury that the Grossinger bill was discussed on November 2, 1970, at the executive committee?

MR. KINGHAM: I have a strenous objection to that,your Honor. I do not believe it to be the fact, first of all, so I could not stipulate to it. I do not necessarily believe that the entry in those minutes is true and correct. It was a statement made by the defendant. I do not assume the truth of that statement. On behalf of the Government I could not stipulate to that.

THE COURT: All right.

MR. KINGHAM: If it was discussed,I want a director here to testify to it.

THE COURT: It will be excluded.

MR. KINGHAM: Thank you, your Honor.

MR. FAHRINGER: Exception, your Honor.

THE COURT: All right, I think that that gives

everybody a chance to work or rest over the weekend, as the case may be, and we will -- I would like to reconvene as close to 9:30 as possible, and I hope you gentlemen can make your arguments acoordingly.

In accordance with the rule in the District here, the Government will sum up first, the defendant will follow, and the Government has rebuttal thereafter.

What do you gentlemen anticipate will be the time that you would like to have, and then I will tell you what I think.

MR. KINGHAM: Your Honor, because of the controverted issues of fact here, the Government would request a half an hour for the direct summation, and ten minutes with the Court's indulgence for the rebuttal summation, with perhaps a little more leeway, depending on what comes up.

THE COURT: Mr.Fahringer.

MR. FAHRINGER: Your Honor, I wonder if you would indulge me to this extent: I would like to have an hour for my summation, and would you hear me --

THE COURT: All right. Don't --

MR. FAHRINGER: Thank you.

THE COURT: Don't argue the point. You know I might withdraw it.

MR. FAHRINGER: Thank you so much.

Adjourned.

THE COURT: All right.

(Adjourned to Monday, November 10, 1975, at 9:30 A.M.)

Discussion.

United States of America

vs.

75 Cr. 1010

Leon Greenberg

New York, New York
November 10, 1975 -9:30 A.M.

(Trial resumed.)

(In the robing room.)

THE COURT: Mr. Fahringer, in respect to the defendant's requested jury instructions, the rulings are as follows:

I will grant in substance, but not in the precise language submitted, all of your requests to charge without singling out specific items of evidence except as follows:

I will deny in the language of the request Items 3, 6, 13, 14, 16 and 19, except as contained in my standard charge.

MR. FAHRINGER: May I except to your Honor's ruling.

THE COURT: Surely.

MR. FAHRINGER: May I ask you in terms of request Number 20 if you would look at that, please, your Honor.

I know there is some debate about whether this should be charged or not. I think I would like to have it

charged, if you will charge it in that language.

THE COURT: I won't charge it in that language, but I will charge it in the standard form. I will tell you the form in which it does appear.

Off the record.

(Discussion off the record.)

THE COURT: This is the language in which the charge will read:

After mentioning the burden of proof on the Government, my charge reads as follows:

A defendant is under no obligation to undertake to prove his innocence. Indeed, a defendant does not have to submit any evidence at all.

On the contrary, under our law, a defendant is presumed to be innocent of any charge made against him in the indictment. That presumption existed when the indictment was handed down and the fact that the defendant did not take the stand under the law creates no inferences against him and should not enter into your deliberations.

A defendant's presumption of innocence remains throughout the trial and in your deliberations.

It is a presumption which is sufficient in itself to require an acquittal of the defendant unless you, the jury, on all the evidence are convinced of the guilt

beyond a reasonable doubt.

MR. FAHRINGER: Yes.

THE COURT: Is that satisfactory?

MR. FAHRINGER: It certainly is, your Honor.

THE COURT: Now, I have endeavored, after reading the record, to gather the contentions with appropriate caveats that they are only the Court's summaries and should be given no credence beyond the jury's own recollections and determinations and the number of it reads as follows and I would like to call it to your attention.

The Government contends that Greenberg called Grossinger in the summer of 1970 and told him that Mrs. Greenberg desired the bar mitzvah to be held at the Grossinger's.

That in September 1970 Greenberg called Grossinger and told him he wanted the bar mitzvah billed in a certain manner and that he had approval of this. He had the approval of the track picking up that much of the cost of the bar mitzvah.

Grossinger told Greenberg, let me turn you over to Mr. Roth, my comptroller, and he will work it out with you and Grossinger then instructed Roth to do so.

That Greenberg thereafter gave Roth dates and

numbers of people from the Raceway whom he said had attended Grossinger's golf outings as follows:

Thirty-one horsemen on July 8th.

46 on July 22nd.

27 on August 5th.

21 on August 12th, and 43 on August 26, 1970.

That the total costs for this number of golf privileges and lunches reached by Roth initially was twenty-seven hundred to $2800; that Greenberg said there was more money due, in the neighborhood of $5000 total, that there should be added the cocktail parties and dinners for the horsemen.

After Roth recomputed this brought the total up to $6200; that Roth showed the recomputed bills to Paul Grossinger, who directed the usual 25 per cent courtesy discount, and told Roth to send bills to the Raceway, which he did, in September of 1970; that the bills amounting to $4856.16 were paid by the Raceway by its check, dated October 29, 1970, signed by Mr.Greenberg and Mr. Sussman, the chairman of the board of the Raceway.

The Government contends further that the evidence shows that the bar mitzvah was held on November 7, 1970, at a cost to the Grossinger's, later computed, at about $5843.25, and of the value of $12,000 to $15,000.

Discussion.

Greenberg paid separately for flowers, music and some gratuities.

That thereafter Greenberg was billed $5843.25 by the hotel for the costs to the Grossinger's of the bar mitzvah and payment was requested, but after a conversation between Greenberg and Paul Grossinger about this bill in April 1971 the amount of the check of October 29, 1970, on Grossinger's instructions to Roth was deducted from the $5843.25 leaving an amount of $987.09, on the account for which Greenberg sent his check to the Grossinger's dated July 12, 1971.

On April 17,1974, Grossinger's on advice of its lawyers sent to the Raceway by registered mail a certified check for $4856.16, which was the amount it had received in 1970 from the Raceway's funds, together with Paul Grossinger's resignation from the board and offices in the Raceway and a bill to Leon Greenberg personally for $4856.16 on account of the bar mitzvah.

A copy of the Grossinger letter was sent to each director and officer of the Raceway and to Leon Greenberg, the defendant. The Grossinger letter and check to the Raceway came to Mr.Schoonmaker, the comptroller, who gave them to Mr. Greenberg and a few days later Mr.Greenberg gave the check back to Mr.Schoonmaker and told him to keep

it. He put it in the safe and kept it until he brought it down to Mr. Kingham in May of 1975.

Grossinger testified that at no time did he agree to pay for food and all else was to be paid by Greenberg.

The defendant by his attorney contended that there was such an arrangement and that it is to be inferred from the facts and circumstances in evidence.

The Government contends that the transactions described were made to defraud or cover up fraud on the Raceway.

The defendant denies that there was any fraud or coverup and defendant denies conspiracy and denies that the bar mitzvah had anything to do with the payment of these Raceway moneys to the Grossinger's and contends that the money paid by the track in 1970 was due the Grossinger's for five horsemen golf outings mentioned previously. The defendant contends that in connection with issuing the check to the Raceway for the $4856.16 he had reported to the executive committee of the Raceway on November 2, 1970, the receipt of bills from the Grossinger's the 25 per cent deduction allowed, and the payment of the bilsl and that this is mentioned in the committee's minutes.

What happens thereafter is as follows:

Discussion.

In summary, the defendant questions the credibility and motivations of the Government's witnesses and denies any connection with or complicity in any attempt to defraud Monticello Raceway in any transactions or alleged schemes in connection with the use of its fund.

The defendant relies on his presumption of innocence and claims that in all events guilt has not been established beyond a reasonable doubt as to him.

The Court expresses no opinion as to the validity of any contention made either by the Government or by the defendant. It is your recollection of all the evidence that controls. You must not infer from this summary that the Court accepts or rejects certain parts of the record. That is no part of the Court's function. The consideration of all the evidence and circumstances or of the absence of evidence is the jury's function and solely the jury's function.

As I have said and I will repeat, my recollection is not necessarily accurate or complete. It is yours which is controlling. Moreover, you are not to be influenced by the matters I have given you or failed to mention or the manner in which I have done so. My statement is not binding on you in any respect except to the extent that you choose to utilize it and confirm it from your own recollection.

Discussion.

Now, that is my prospective charge in this matter and it giives you now the opportunity to reflect on it and determine whether there are any factual inacouracies.

MR. KINGHAM: Your Honor, I do have one, I believe. In the portion of the discussion of the contentions where you mentioned that in April of 1971 and it concerns the contact betweenGreenberg andGrossinger with respect to the $5843.25 bill, I believe you mentioned in the prospective charge that it was after a conversation with Leon Greenberg that Paul Grossinger called in Roth and had him knock dowr the bill.

MR. FAHRINGER: There was no conversation.

THE COURT: I thought they had a telephone call.

MR. KINGHAM: The testimony as I recall it, Judge, was after the letter, which is Government Exhibit 5A, he called in Roth and had him knock down the bill.

THE COURT: After a letter and not a conversation. I think you are right.

MR. KINGHAM: After that he then called Greenberg and told him the bill was $987.09.

THE COURT: I was trying to skeletonize the whole of the contentions on both sides. Perhaps I skeletonized it too much.

MR. KINGHAM: The point was it was a letter and

not a conversation.

MR. FAHRINGER: My concern would be that I think it is important to mention that Mr.Grossinger did contact Mr.Greenberg first to have it at his place. I don't think that is disputed. I think that Mr.Grossinger said he approached Leon Greenberg and asked him if he would have it at Grossinger's.

THE COURT: Yes, that should certainly be stated.

I suppose that would follow the first sentence. The Government contends that Greenberg called Grossinger in the summer of 1970 and told him Mrs.Greenberg desired to have the bar mitzvah held at the Grossinger's.

MR. FAHRINGER: I think the facts are that he said he was at a board of directors meeting and he went to Leon Greenberg and talked to him about having it there and then Mrs.Greenberg called.

THE COURT: I was going to go backwards because that is not a Government's contention.

MR. FAHRINGER: It came in through their case.

THE COURT: TheGovernment presented evidence --

MR. KINGHAM: I have no quarrel with that, your Honor.

THE COURT: -- presented evidence that Grossinger approached Greenberg and how do you want to phrase it,

offered the facilities of the Grossinger's.

MR. KINGHAM: Yes, that is what happened.

THE COURT: And offered the facilities -- offered to him the facilities of the Grossinger's for his son's bar mitzvah party.

Anything else on that account?

MR. FAHRINGER: No, your Honor.

THE COURT: The Government contends that Greenberg called Grossinger and so on.

Is there anything else that you caught that you think ought not to be charged?

MR. FAHRINGER: I am not saying this isn't the Government's contention, but it seems to me it came awfully hard on that thing, and I don't recall the exact phrasing where you say something about --

THE COURT: I don't want it to bear down in anybody's favor. I want it to be a dispassionate statement of the actual evidence without any conclusory aspect.

MR. FAHRINGER: I appreciate that, your Honor. I thought, in effect, he testified that he wanted the bar mitzvah billed in a certain manner and that he had approval for this. I don't recall that he had approval of the track picking up --

Discussion.

MR. KINGHAM: That was Grossinger's testimony.

THE COURT: It is in exact words.

MR. FAHRINGER: Is that right, okay.

THE COURT: Yes. Those are his exact words, Mr. Fahringer. I did not interpolate any words there at all.

Here (indicating)

MR. FAHRINGER: All right.

The only other thing, your Honor, I didn't know that Bernie Roth said there should be added cocktail parties and dinners for horsemen. I thought Greenberg said there was more money due in the neighborhood of $5000.

THE COURT: That, too, I think is right in the record, in the direct examination of Mr. Roth.

Yes, I had computed the amount of the five bills and told him what the amounts of the bills were, which were $2700 or $2800. Mr. Greenberg indicated that that was not enough; that there was more money due the hotel than that and proceeded to ask me if there were any other typef os services that the hotel could have performed during these outings.

Mr. Greenberg told me that we should add some

charges on for these items.

MR. FAHRINGER: Okay.

THE COURT: Actually, I tried very diligently to read on the patent, so to speak, exactly.

Is there any other criticism that you have of this charge?

MR. FAHRINGER: No. The only thing is what I would like to do, your Honor, is just file my requests in the language that I have asked, if I may, as a Court exhibit and take exception to those that you didn't charge in my language.

THE COURT: Yours will be marked Court's Exhibit 2. Your requested instructions you are talking about?

MR. FAHRINGER: Yes.

THE COURT: They will be marked as Court's Exhibit 2 by the clerk and you will have them fully in the record.

(Court's Exhibit 2 was marked for identification)

MR. FAHRINGER: Fine, your Honor.

THE COURT: Have you any other criticism of the proposed charge?

MR. KINGHAM: I have not, your Honor.

Discussion.

THE COURT: The balance of the charge, as I say, is standard operating machinery and, of course, you will have an opportunity at the conclusion of the charge to deal with anything that you haven't actually heard. The purpose of the meeting at the present time is to clear the part that you have heard.

MR. FAHRINGER: Your Honor, would it be an imposition to just ask to hear your charge on character evidence, if that would only take a second, so I am prepared for that in my argument.

THE COURT: Yes. The charge on character evidence is as follows:

There has been testimony here of the defendant's reputation in his community for truth and honesty. You should consider such evidence, together with all the other evidence in the case, in determining the guilt or innocence of the defendant.

Reputation evidence, if you believe it, may in itself create a reasonable doubt where, without such evidence, no reasonable doubt would have existed, but if upon all the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty of showing that he previously enjoyed a reputation of good character does not justify or excuse the offense and you should not

acquit a defendant merely because you believe he is a person of good repute in the community in which he moves.

The testimony of a character witness is not to be regarded by you as expressing the witness' personal opinion of the defendant's character. It is a report of a reputation in the community. Testimony of character reputation is not to be taken by you as the witness' opinion as to the guilt or innocence of the defendant. The guilt or innocence of the defendant is for you and for you alone to determine.

I have declined to charge the addition that the government proposed, namely, the jury should consider whether these people have misled as to the person's character. I think that there is a case --

MR. KINGHAM: I have no objections, frankly, to dropping that portion of the charge.

THE COURT: Is that satisfactory?

MR. FAHRINGER: I would prefer it in my language, but that at least allows me to argue from it.

THE COURT: I think this is the language approved by the second circuit.

MR. FAHRINGER: That may be, but, in any event, what I would like to do, I will at the end of the case except to it.

Discussion.

THE COURT: We have an unfinished item. Counsel have agreed that Exhibit W will be admitted in evidence to the extent that it recites for the executive committee meeting of November 2, 1970 the salutation of the minutes, the persons present and presiding, the entire statement in connection with the subject matter here of the bills and the signature to the minutes. The exhibit will be marked accordingly.

Now, I tkae it that you have not discussed or agreed on who prepared them or anything on that score?

MR. KINGHAM: No, there will be no evidence on that. We will just have it in that way.

THE COURT: Now, the other thing that is involved is that I am to tell the jury today that the letter of April 17, 1974 is struck from evidence and the only evidence before the jury is that Grossinger sent a certified check for $4856.16 to the raceway, together with his resignation, and a copy of the letter went to every director ofthe raceway and a copy of the letter, together with a bill to Leon Greenberg personally for that maount, went to Leon Greenberg.

Was that the understanding the other day?

MR. FAHRINGER: I think so, your Honor.

MR. KINGHAM: That is fine with the government, your Honor. I think that states it.

THE COURT: I just wanted to get these housekeeping matters cleared up.

MR. FAHRINGER: I have to renew all my motions.

At this time, if it please your Honor, I would like to renew all motions heretofore made for a dismissal of the indictment and a judgment of acquittal as if fully made at the end of the whole case.

THE COURT: They may be so deemed to have been made and the rulings stand.

MR. KINGHAM: Your Honor, there is one item I would like to bring up on the charge as a whole. I noticed during my examination that a couple of the jurors had appeared to be taking notes. I am not so sure it was extensive or whether the notes had anything to do with the case, but it might be appropriate for the Court during the general part of the charge to suggest that if there were any such notes that they are only what that juror wrote and they are not to be given any undue weight in the jury room.

THE COURT: I am sorry it wasn't called to my attention. I didn't notice any such thing.

Discussion.

MR. FAHRINGER: I didn't either.

MR. KINGHAM: I may be wrong and, if I am wrong, it will probably come back to haunt me.

THE COURT: I will find a place to talk about jurors' notes.

MR. FAHRINGER: Your Honor, on the minutes, I am wondering if that shouldn't be read into the record so that it is a part of the trial record and then in our summations we can just comment on it.

THE COURT: Let's do it right now at the time that I will allow ou to read in evidence Exhibit W to the extent that it is admitted and you will then proceed to read it in accordingly.

All right, let's go ahead.

MR. FAHRINGER: Judge, I have never used this procedure of summing up. The government will sum up first for a half hour --

THE COURT: We have a rule now which requires the government to go first and they have a short rebuttal.

MR. FAHRINGER: Okay.

THE COURT: All right.

Let's go forward.

MR. KINGHAM: Thank you, your Honor.

Discussion.

(In open court; jury present)

THE COURT: Good morning, ladies and gentlemen.

We have been slightly detained clearing away some legal matters which will tend to shorten your labors so we haven't lost any time.

I believe that there is an offer of proof that is to be made at this time.

MR. FAHRINGER: That is correct, your Honor. May I proceed?

THE COURT: Yes.

MR. FAHRINGER: This is a portion of Defendant's Exhibit W that has now been received in evidence.

"Minutes of the executive meeting of the Sullivan County Harness Racing Association, Inc., held on the second day of November at 2 p.m. on the afternoon of said day pursuant to policy established by the committee.

"Mr. Milton Kutsher acted as chairman, Mr. Leon Greenberg acted as secretary. Upon roll call the following members were found to be present:

"Milton Kutsher, Leon Greenberg, Sidney Sussman, Donald Hammond, Herbert Sokofsky, Paul Killian,

Harold Reynolds.

"Absent: Julius Slutsky.

"Mr. Greenberg discussed the Grossinger bill for all events, including parties for horsemen, golf tournaments, etc., and stated that he had negotiated a 25 per cent discount in accordance with the admonishments of the executive committee previously and that the entier bill had been paid in full.

"Signed Leon Greenberg, secretary; Milton Kutsher, chairman. '

THE COURT: Now, the further matter, ladies and gentlemen, is this: Some of you may recall that on April 17, 1974, Paul Grossinger sent a letter to the raceway with a check. I am striking out of evidence the letter itself and in its place it is stipulated on this record, you are to disregard the content of the letter or any aspect of the letter itself other than this stipulated version of the matter.

Paul Grossinger sent a certified check for $4856.16 to the raceway with a cover letter of April 17, 1974, together with his resignation from offices that he held in the track and a copy of the letter went to every director of the raceway and a further copy of the letter, together with a bill to Leon Greenberg

personally for $4856.16, went to Leon Greenberg

That is the entire evidence on that subject and you are not to advert to any other reference to that matter.

If by chance you happen to retain in your recollection anything about the letter: the letter is out. You wipe the letter from your memory.

That, I believe, concludes all of the matters on which counsel have conferred with the Court and these things are deemed to have occurred prior to the time that both sides rested in this case and they will be taken as part of the trial proceedings.

The order of business this morning will be to hear Mr. Kingham for the government first.

Mr. Kingham.

MR. KINGHAM: Thank you, your Honor.

May it please the Court, Judge Pollack, Mr. Block, Mr. Fanringer, Mrs. Heitner and members of the jury:

This, as you know, is a case in which the president of one of the most successful businesses in Sullivan County, an upstate county in this state, betrayed the trust that was placed in him by that corporation's directors, the trust that was placed in

him by that corporation's stockholders and stole almost $5000 from that corporation and used it to pay for his son's bar mitzvah or much of the expense.

In so doing, ladies and gentlemen, he defrauded the raceway. He defrauded those directors, those members of the executive committee that put to much trust in him. He defrauded those almost 5000 shareholders and he defrauded the public, the betting public night after night after night that made Monticello Raceway the successful business it was.

He attained that 4856.16, as you have heard, under false pretenses , by telling the track and indeed the world, that thatmoney was being used to pay for horsemen's outings at Grossinger's, and that was a fraud, ladies and gentlemen, because as Leon Greenberg knew then, and we now know, those outings did not take place. But, indeed, even if these outings or some of them, or there had been occasions when fellows from the track went over to Grossinger's for dinner or their wives sat by the pool, even if some of those things had taken place, there is still a fraud here because Leon Greenberg knew that the money he had the track paying for these things was money that Grossinger's was going to use to defray the cost of the bar mitzvah, and he never told the track thatit was paying the cost of the bar mitzvah. He just told them about five horsemen's outings.

Now in my opening statement I made certain promises to you. I promised you thatthe government would prove that Leon Greenberg schemed to defraud the track and I promised you that the government would prove that he roped Paul Grossinger into this, and that Grossinger then used Bernie Roth as the pawn to prepare those bills and to have them mailed.

We have done that. And we have proved, as I

promised, that in the spring and summer of 1971, the bill for cost for the bar mitzvah was then reduced conveniently by the exact amount that Leon Greenberg had had his corporation, the Monticello Raceway, pay for these so-called horsemen's outings.

Now I'm going to talk to you briefly now about the facts in this case; not about fantasy, or what might have happened or could have happened or maybe happened, but about what we have proved about what the facts are, about what did happen, because the government, as you know, has only one interest in a criminal trial, that is to produce the facts for the jury and to insure a fair trial. And so I'm not going to talk to you about your imagination and appeal to you to make guesses, because that would not be a fair trial. I appeal only to your intelligence and to your common sense, and I ask you, members of the jury, to apply your intelligence and your common sense to the facts of this case.

And when you aer in your jury room deliberating and thinking about the facts in relation to the law which Judge Pollack will instruct you on, and when you have applied your intelligence and your common sense to those factors, you are going to find Leon Greenberg guilty here, and you are going to find that he

agreed with Paul Grossinger, and ultimately Bernie Roth, to defraud the track, and to take that money, money that was the shareholders' money and the directors' money and the corporation's money and used it for his own personal purposes.

Now, first in the evidence, and let's talk about the evidence for a while, the first thing we have are the bar mitzvah's billing arrangements. We know that after a board of directors meeting, probably in the spring of 1970, Paul Grossinger went to Leon Greenberg and said, in essence, "I have heard you are going to have this bar mitzvah for your son Andrew."

Leon Greenberg said "Yes, we plan to have it at the Concord."

And Paul Grossinger said, "Well, why not have it at my place? I will give it to you for cost."

And you recall Mr. Fahringer in his opening statement said there had been some contacts made with the Concord and so forth, and obviously since the Concord was a hotel that didn't have a director or a member of the board of directors at the track, it might have cost Leon Greenberg the retail price to have the bar mitzvah at the Concord, and so his friend of 20 years,

Paul Grossinger, said, "Look, have it at my place, I will give it to you at cost."

And eventually Mr. Greenberg, after thinking about it and talking to Mrs. Greenberg, got back to Paul Grossinger and said, "Mrs. Greenberg really wants to have it at Grossinger's, start making the arrangements."

Paul Grossinger admittedly was very pleased. It was prestigious to have that bar mitzvah at his hotel. He took it for granted, as you know, that his hotel would do a good job, and he was happy to have the bar mitzvah there.

And the arrangements proceeded. And you have heard, for example, from the testimony of Mr. Sofferman, the florist, Mrs. Grossinger made the arrangements for the bar mitzvah. Obviously Grossinger's was to put the affair on but there were certain expenses that were to be contracted out to other people, people like Mr. Sofferman, the florist, people like the band, the magician, who would bring services into Grossinger's, that Grossinger didn't provide.

Mr. Sofferman even testified that he had been contracted to do a Grossinger family affair. So obviously that is not part of the cost that Paul Grossinger would have been talking about. He's talking about what it

cost the hotel to put on this bar mitzvah.

Now, Mr. Fahringer promised you also in his opening statement that he would prove from the government's own documents beyond a doubt that Mr. Greenberg understood that Paul Grossinger was to pay for the food and Leon Greenberg was to pick up everything else, gratuities, the flowers, and so forth.

You know there is absolutely nothing in this record to substantiate that, ladies and gentlemen. As a matter of fact, you recall in testimony that was absolutely unimpeached here, Paul Grossinger denied that that was the arrangement. He said the arrangement simply was cost.

So let's look at what really happened. We know from Bernie Roth's testimony, you recall the comptroller of Grossinger's,when an affair of this sort is normally held, there is something called billing insttuctions and that means that all of the department heads at the hotel are told how the event is to be billed, whether there is a flat price per person, exactly how the prices are to be determined. But there weren't any instructions here.

And because the event was ostensibly tobe

billed at cost, Paul Grossinger's instructions were, "After the event, get together what it cost me to put this on, and give me the summary." And that is indeed what happened.

But on the date of the bar mitzvah, of course, the department heads don't have any billing instructions, and so the bar manager, for example, rings up all the liquor retail prices. He didn't know what else to do, number one, I think that is obvious, and number two he wanted to make sure that his staff, the bar waiters and bar waitresses got their tips based upon retail prices, of course, which are higher than the wholesale prices.

And that just makes sense.

And those prices were then posted on Government's Exhibit 8. Now, Government's Exhibit 8 is the ledger card, the Grossinger ledger card. And the first three entries from the bar tickets that we have are for November 7, 1970, and it totals about $1803.25 in bar charges. And those are the only charges that came into the cashier on November 7. And then on November 8 we have two interesting charges.

First is the $1200 payout to Leon Greenberg. Now that payout is represented by this slip,

which is Government's Exhibit 9. I will take the tag off -- you can see it a little better -- which says, "11/8/70, Leon Greenberg, bar mitzvah gratuities, $1200," and it's signed by Leon Greenberg. There is no dispute that that is his signature in this case. He received $1200 in cash the day after the bar mitzvah, and it says here, "bar mitzvah gratuities."

Now, that is probably what Mr. Greenberg used the money for that day, and the $1200 was then posted -- you recall that term; that just means you enter it on the ledger -- was entered onto the ledger card, $1200, November 8, 1970. paid out, it says on here, and Mr. Roth, the accountant, the comptroller, told you that paid out means cold hard cash goes to somebody; that $1200 in cash went to Leon Greenberg the day after the bar mitzvah. That is what happened.

But indeed, there is not an employee of Grossinger's brought in here by the defendant. Not even Hyman Hoffer, the assistant maitre d', to tell you that he got any cash from Mr. Greenberg on the day of the bar mitzvah or the day after the bar mitzvah or any time.

In fact, Mr. Hoffer saw Mr. Greenberg give Dave Giver the maitre d' a tip, saw him give him some money. There is no evidence in this case that Mr. Giver,

acting on behalf of Mr. Greenberg or for the hotel or for anybody else, then distributed these tips among the help.

And of course, Mr. Hoffer knew nothing about this $1200 payout, not a thing. And he was the assistant maitre d', the assistant man in charge of the event.

Now, also recorded is a room obviously used by a Greenberg relative. You remember the room slip that came in for Sally Greenberg and that room was billed at $168 and that was also placed on the Greenberg bar mitzvah's account. It was just part of the things that had happened that day, and it went on to the account as well. But these things have to be recorded, ladies and gentlemen, because they are charges that the hotel incurs.

It doesn't mean that ultimately they're to be paid at retail by Leon Greenberg. It just means that the hotel has to have a record of the amount of money that is going out, for what the retail prices are. It was all posted to the account.

Now let me tell you this: The balance of this bill, November 8, 1970, was $3,171.25. That included the bar charges, the $1200 cash gratuities, and this

$168 for the room.

Obviously, if the deal was that Paul Grossinger would pick up the food and Leon Greenberg would pay for all these other things, they would have sent a bill out for $3100 and change right then. There wouldn't have been any problem with that -- just like any hotel.

Okay. Mr. Greenberg gets the bill; send the bill out, $3100. But obviously that wasn't the arrangement here, because the arrangement was that this was to be billed at cost.

Now we know also that the mean slip which is attached to Government's Exhibit 8, which was a record made by the dining room, which had no billing instructions as to how to charge for the meals, that 312 guests, the bar mitzvah guests, ate in the dining room that day. You didn't see that meal slip attached to the blowup of the government's exhibit that the defense showed you, did you, but it's there, and Mr. Roth testified it was there in their files, and that shows you that records were kept of how many people ate. But there were no billing instructions and obviously that is why there is no amount on this card for the food, because it was to be at cost.

You see, the evidence shows, ladies and

gentlemen, that Leon Greenberg was not satisfied with the deal that his friend Paul Grossinger had made for him. The wasn't satisfied that he was going to get this at Mr. Grossinger's cost. And so he called up Mr. Grossinger in September or early October of 1970 and said, "I want the bills for this handled in a special way."

And from that Mr. Grossinger got the message that this was to be billed to the track, and indeed, Mr. Greenberg said, "It's approved. It's okay."

What did Paul Grossinger say? He said, "I will put you in touch with Bernie Roth, my comptroller, and you work it out."

That is exactly what happened.

When Greenberg and Roth spoke, of course, Mr. Greenberg did not tell Mr. Roth that these were bar mitzvah bills. He didn't say, "We are going to get together and make up phony bills for a bar mitzvah."

He told Mr. Roth, who is the comptroller and an executive of this hotel, and doesn't know when there were golf outings or anything else, he said, "Well, there were these government outings and these are the statistics; you go ahead and make up the prices and get back to me and let me know what happened."

And that is what Bernie Roth did. He did

what he was told, ladies and gentlemen.

He went back to his office and he computed these bills. Well, he computed these bills without the dinners and cocktail parties, of course. And figured out what it would have been for 31 horsemen on July 8, 46 on July 22, and 43 on July 26, what it would have been, what the sales prices would have been for these fellows to play golf, for these fellows to have lunch at the hotel.

And he got to Leon Greenberg and he said, "It comes to $2700, $2800."

Greenberg said, "That's not enough."

Obviously Greenberg knows his bar mitzvah for 312 people is going to run a little more than $2700, $2800.

"It's not enough, Mr. Roth. What other kind of events could they have had?"

So Bernie Roth, he who doesn't know, says, "Well, maybe there are cocktail parties and dinners."

"Ah, that is right, they had cocktail parties and dinners. Add that on too. Add in those cocktail parties and dinners and get back to me and let me kmow what the cost was."

Well, Bernie Roth does that, he does what he was told, he checks with Mr.Grossinger in between and Mr. Grossinger in sum says, "Whatever Leon tells you to do, you do it. That is what I want. You do what Leon says."

And he did. And he made up the bills, and he made up these bills the way you see them, but again, there wasn't the 25 per cent discount.

And he showed the bills to Paul Grossinger, and he said, in essence, "Look, I have been doing this. Greenberg told me to write these up, these are what the bills are."

And Grossinger, obviously to make these bills look good said, "Okay, make sure you put on the 25 per cent discount."

Now before that,you will recall that Roth had gotten back to Greenberg and said that the cost comes to some place around $6000 or something more than that, which obviously is what it has to be before you took off the 25 per cent. Greenberg said, "Fine, mail the bills to the Raceway, to my attention."

Before that, when he checks with Paul Grossinger, before he did mail them, Grossinger said, "Put that 20 per cent on, the usual courtesy discount."

Bernie Roth again did what he was told and he sent these bills out, and the final statement has the magic number 4856.16 and that statement is dated September 30, 1970.

Mr. Roth did not recall whether this packet of bills, that is, the individual bills on the August 31st summary all went out together and then were followed by the September 30 summary. But it is clear that they all got to the track, and indeed, the track was notified through Mr. Greenberg, they went to his attention, that the track owed $4856.16 for some horsemen's outings.

The bills were received at the track. There was a check made out by Edna Coyl on October 29, 1970. You have heard about Thursdays, Wednesday, Tuesdays. You can figure out October 28th was the usual billing date, it was a Thursday.

She made out a check on the machine, check 2827, Then she voided the check. First, as you will recall from her testimony, becasue it was such a high amount, because it was supposed to be signed by Mr. Greenberg personally, and by somebody else who could sign, like Sidney Sussman.

So that is what he did. Mr.Greenberg has the check given to him -- he must have, he signed it -- and he got Sidney Sussman to sign it. And then he went, as you heard this morning, into that executive committee meeting, and said, "I have negotiated a 25 per cent discount." Big deal. It was the usual courtesy discount.

And he said, "The bill has been paid in full."

Obviously, it had been paid. Edna Coyle made the check up the previous Thursday. EVen the replacement check is dated October 29, 1970. It was signed, and he got Mr. Sussman to sign it, tried to lend a little degree of integrity to this situation. They sent the check to Grossinger's.

Now, after a check is made out -- I want to show you the check, Government Exhibit 3 -- the same time a check is made out, there is this voucher, you recall Mr. Schoonmaker told us, is made out. If you look at them in the jury room, it is just a duplicate of the check, probably go together like this. I thinkEdna Coyle told us this. And on this side there is an extra little stub, andyou saw that Mr.Roth got this part of the stub, and he Xeroxed off the check, and put that stub there, so there is no mystery about what all these stubs are.

In any event, this blue voucher, which is kept

by the track, has a little stamp on it that says "Auditing committee, okay."

That might give you the impression that the esteemed members of the auditing committee looked at this bill and said, "That's great, Leon, you are paying the bills for the horsemen's outings, paid it," and stamped it. They see the bills after they are paid. We don't know when this auditing committee stamp was on there.

As Mr.Schoonmaker, the comptroller of the track, told us, the auditing committee sees bills after they are paid. Are they going to question the signatures of Leon Greenberg, the president of the track, and Sidney Sussman, the chairman of the board on the check?

What did Mr. Roth do when he got the check? First of all, he opened an account -- in a sense, all that means is he prepared a ledger card and he recorded the receipt of the $856.16, and a couple of weeks later, he just balanced the account down to zero, by having the information taken off the bills, and posted to the ledger card.

And there is no mystery about that. You don't have to be an accountant to understand the transactions. It is all very simple. On Government Exhibit 5, November 4, 1970, which is the date they deposited the check -- couldn't have deposited it the day before, it was Election

Day, remember, and then November 15, the breakdown from his work sheet -- the work sheet is made up from the bills. They just balanced the account out to zero. Of course, that is a most unusual way of doing business, because in a hotel, as he testified, if events take place, the first thingyou have are these black entries, that is the charges for what the guests or the organization or the function is going to be charged, and then you have the red entry which is the credit or the receipt.

Of course, this was prepared backwards. Just another little something to show you what was going on here.

This was not the normal way of preparing bills at all. Indeed, Mr. Roth never got involved in this sort of a setup. He is the financial officer of that huge hotel. He doesn't get involved in these normal billing arrangements.

But at that point, ladies and genltmene, as far as the track knew, as far as the world knew, and if anybody wanted to pry into Grossinger's records, and as far as anybody like that would know, there were horsemen's outings, the bill had been paid by the track. And you look at those bills, they are absolutely beautiful. They look like something really took place, something really took place on those days; there was a 25 per cent discount, the track

paid the bills, and everything is just fine.

But only Paul Grossinger, who came in here to testify and did so, I submit, truthfully,only he at that point and Leon Greenberg knew that the track had paid the first isntallment for the Andrew Greenberg bar mitzvah. And isn't it convenient, of course, that the payment and the deposit were made just a scant five days before the bar mitzva place?

Now this is very important. If the outings had really taken place, and if Leon Greenberg knew they had taken place, then, of course, PaulGrossinger is lying -- at least this is what Mr. Fahringer is going to argue to you -- about the conversations that he had with Mr.Greenberg, particularly the one where there was an understanding between them that the track was going to pick up part of the payment of the bar mitzvah.

But, of course, we established, didn't we, that these outings never took place.

First,you heard from Greenberg's own witnesses, the five horsemen, trainers and drivers who came in here to testify for you, that generally everything at Grossinger's was free. It was on the arm, as they said. And they were welcomed at Grossinger's and they were well-treated, and all of a sudden,and only for July and August 1970, there

were bills for these things to the track.

Now that might have been okay if all these events had taken place, but even Peter Donnelly -- you remember the good looking young golf pro who came in here and testified on Friday morning -- even he recalled how the records were kept of these outings, and he said this, he said either there was a blanket slip -- and a blanket slip, and we took this as an example from May 23, '73 -- of course, '73 has nothing to do with this case -- this is an example of a blanket slip, and this records that there were 13 carts used for 26 people, and it has got the name Paula, so it was undoubtedly prepared by Paula Bergman, it has Iberger -- Mr. Jacob Iberger, who ran these outings, and Monticello Raceway, Monticello, New YOrk. It says "Mail bill" on the top. This is a sample of a blanket slip. Okay. So either there was a blanket slip like this, or -- I will just take one out of here, there was an individual slip, like the green ones, of which we have 2700 over there, okay.

So there were two ways of doing this, either the blanket or the individual slip.

Mr.Donnelly testified under cross-examination that one or the other has to be done, and the reason is very simple. If you look on the bottom of many of these slips, and as Mr.Donnelly and I discussed, yousee there is

an insurance waiver down there about the golf carts. You had better believe that Grossinger's with a golf course like that,is going to make sure they get that waiver signed by the people who are using the golf carts, or somebody who is responsible for them.

And so you know that if an outing has taken place, or anybody plays golf, there has got to be a slip to show it, either a blanket slip like this, or an individual slip.

Mr.Fahringer in his argument to you earlier, ladies and gentlemen, made much of this thing about, well, the track is different, because it is not a guest, there is no room for it to be billed to. Well, I suppose the Grossinger family is different,too, but if you want to, in the jury room, thumb through all those slips and see how many you find for members of the Grossinger family and their guests written up, no charge, with that insurance waiver signedon those slips, and there is a slip for everybody who plays golf. How else could you keep records on a golf course if there weren't a slip like that?

How about those horsemen? Naturally, none of them recalled having played golf on any one of the five crucial dates. You wouldn't expect them to. It is five years later. But you learn a lot from those horsemen. You learn from James Curran, first of all -- he was the first

horseman who testified, I remember, he was the gentleman who would bring the sulkey and the horse over to Grossinger's from time to time -- you learn from him that he went on every single outing during that period, and he knows because he is a golf nut, self-confessed, if you will. And he said, "There never were lists to sign at the track." Who is going to know if there were lists better than the guy who goes on every outing?

And he also told us, if you recall, that the golf season lasts at least from May through September. Up in the mountains. And he'd go on every single outing and he named for us the other country clubs that had good golf courses, not just pitch and puts, but regulation, 18 and 9-hole golf courses.

I will grant you that Grossinger's was the one with the 27-hole golf course, fellows liked to play at Grossinger's.

That doesn't mean they played five times or those five dates during July and August 1970.

We also learn from the horsemen that there is no question that they did indeed play golf at Grossinger's in 1970. We know that. We have got the bills for the golf outing on June 24, 1970.

Now, all the bills aren't here, I will grant you

that too. You can tell that by looking at the bill sent to the track and you can tell that because the numbers are necessarily in sequence. All right, but you know there was an outing June 24, 1970. If you count from all the days we know are Wednesdays, it was a Wednesday. And they were there, and I think if you will look hard enough, you will see "Iberger, Mr., Monticello Racetrack." This is how the outings were recorded.

Ladies and gentlemen, look through those 2700 slips, if you want to, and find another Wednesday outing, during July and August 1970.

You are not going to. You might find one or two slips billed to Monticello Raceway, some for a man named Frank Genovese, whom your never heard of, andyou are going to find lots of Grossinger family slips, andyou are going to find slips for John and Jane Doe. But that is not the point. The point is you don't find the slips for the Monticello Raceway outings. The reason you don't is because there weren't any.

There was one in June, maybe there was one in September, who knows. The point is they weren't on those five days, and they weren't July and August.

You see,when the horsemen testified about things being free, of course, they meant that they didn't pay for

it.

And they didn't, because you can see from the June 24th bill that indeed there were bills sent to the track for horsemen's outings on earlier occasions, when they actually took place.

But every time it took place, and there were slips, and there are no slips here.

You know, there are silent witnesses in this case, 2700 of them in that box. Listen to them shout as to whether or not these outings had taken place.

Something else has also been proposed to you here about the golf outing procedure and that is with respect to these lists that were supposedly kept at the track. Well, the one thing we know, I think, after hearing on Friday the defense witnesses that they weren't kept in the publicity office and they weren't obtained by Mr. Greenberg so he could read off information from lists that actually existed to Bernie Roth on the telephone.

First, the lists, if any, were useless. Half the horsemen came in here and testified either they didn't sign up or they sometimes signed up or there weren't any lists or maybe there were lists. You don't know what their testimony is.

Mr.Fahringer in his opening, of course, claimed to you that the lists were kept. Eileen McCullough, Mr. Greenberg's secretary, came in and she said the lists were kept in the publicity office.

Neither Mr.Fahringer nor Mrs. McCullough worked in the publicity office. If those lists were kept for any reason, the only reason you would keep them is to compare them with the bills when they came in to make sure you were

getting billed for the proper number of horsemen.

Of course, that doesn't make sense because the lists were inaccurate. We know that and I am sure the track doesn't run its business that way.

But also they have Loretta Kratz on the stand. You recall Mrs.Kratz, the young lady who came in, I think mid-morning on Friday, and she testified that she was Allen Finkelson's secretary and she worked in the publicity office from 1969 to the present time.

Mr.Fahringer asked her a few general questions. Yes, there were lists, we used to call the hotels and so forth, but he never once asked her about the year 1970 and I think that is significant. What period was Mrs. Kratz talking about?

You look at her testimony or ask to have it read back at pages 434 to 438 of the record of this very trial. There is not a peep in there about 1970 except we know she worked there then.

She didn't even testify that the lists were kept there after the outings took place. So that they could be compared or used by somebody later on. You better believe she was a defense witness and if those lists had been kept Mr.Fahringer would have gotten those answers from Mrs. Kratz.

She wasn't asked those questions. She didn't give that testimony. She was in a position to know whether or not those lists were kept and so was Edna Coyle, a delightful lady, who came in here and told us about the Burroughs machine she used, and how the checks were made out. She was utterly delightful.

She was in a position to know, she has been the bookkeeper there for years. She would know if lists had been kept to be compared with the bills.

Mr.Fahringer didn't ask her any questions about that.

Schoonmaker, the comptroller, from the track, came in and testified as a Government witness. Mr. Fahringer had plenty of chance to cross-examine him and ask him about the lists and all we hear from Schoonmaker is, I played golf two or three times over at Grossinger's during 1970.

If the lists again were kept to compare with bills and so forth, who would know? Loretta Kratz, Edna Coyle and Robert Schoonmaker.

But, no, who do we get the testimony from? We get it from Eileen McCullough, the dutiful secretary.

That is enough on the gulf outings. I think the evidence is certainly, ladies and gentlemen, that these did not take place.

They certainly didn't take place in the form that Mr. Fahringer claims they did and I think we know that these bills are phony so let's shift the scene a little bit.

After the bar mitzvah when the costs have been determined, and collected by the various departments in the hotel, a report was made up and that is Government Exhibit 12, the cost summary sheet.

You know this is a cost sheet. First of all, not just because it says "cost," but because the liquor, for example, is $522 instead of $1300 or whatever it is that is reflected on the bill there.

The food cost is $2300 and I think if you will look on the breakdown that Mr.Fahringer tried to get from Mr.Grossinger and multiply it out and see that the retail value of the food would have been about $6000.

Additional payroll costs. Some people working at $35 a day. others inother categories working for different rates. These are all added in. This is what it cost.

It also cost Grossinger's in cold cash that they gave to Leon Greenberg, that is a cost so they put it on the summary sheet, $1200 advanced for gratuities. They add on the bar waiters' gratuity, which, of course, are calculated against the retail prices because that is what the waiters

and waitresses in the bar wanted to make sure they got their gratuities on. Total $5700 and change.

We know an additional $75 added later on so it is $5843.25.

You also know it is cost and they are not going to bill Leon Greenberg for incidentals because down here it says note: Provided room 4505 for two people. That is the Sally Greenberg room, $168. Give to him for nothing, it is a part of the cost.

Two rooms for changing clothes on 11/7/70. No bill for that.

When he sees this summary I think Paul Grossinger said to Roth, send a bill, mail it out. It looks right, send it out.

I think you can find, you saw how Paul Grossinger testified, he had forgotten about his deal with Greenberg or he thought Roth knew all along and that Greenberg had told Roth that the bar mitzvah bill was to be handled togeether with the horsemen's outings.

Of course, Roth didn't know so he went ahead and sent the bill out to Greenberg for $5843.25. Imagine what Greenberg's surprise would have been when he gets a bill for $5843.25 when he knows the track has already paid $4800.

So, he has Eileen McCullough prepare and send this letter,Government Exhibit 15A.

"Dear Paul: Would you pleasse verify the correctness of this bill."

Mr.Fahringer will argue to you that this is an innocent letter and all he was asking for was a breakdown. In fact, he claimed in his opening that at this point all Mr.Greenberg thought he had to pay for was the liquor. That doesn't make any sense in light of all the evidence that we have.

"Please verify the correctness of this bill."

Ladies and gentlemen, this is a scheme, okay, it is a conspiracy. You don't expect Greenberg to say to Eileen McCullough, look, send Paul Grossinger a letter and remind him that the track money is supposed to pay for the bar mitzvah. You just don't do that because people who are engaged in this kind of a while collar crime don't just sit down andmake out contracts and send letters back and forth and advertise to the world, to anybody who wants to know, that they are in on a scheme like this, so you send an innocuous letter.

But it gets the message across because as soon as Grossinger gets this letter, he calls in Bernie Roth. He says, "Bernie, apply those track funds, you know, the

$4856.16, apply that to this bill and mail him a bill."

Then it is obvious to Roth what is going on. He gets on the bandwagon, does what his boss tells him, and sends the bill to Greenberg for $987.09 and Grossinger calls Greenberg and says, your bill is $987.09 and Greenberg says, fine.

Of course it is fine, that is what they agreed on. They are not going to advertise that to the world with letters and correspondence and documents w ich tells you they have ripped off the track.

After that they keep sending bills to Mr.Greenberg for a couple of months. He doesn't pay and in the meantime, to make this whole thing look good, Mr. Roth has the bill adjusted, this bill (indicating), which is the only record really that the hotel cashier's office has, he has got to do something with the cashier's office, he adjusts it down by twenty-two hundred some dollars so the balance is $987.09. That way when the $987.09 check comes in from Greenberg the cashiers aren't going to wonder why Greenberg is only paying $987.09 against this big balance.

So, there is $2259.16, forget those numbers, they don't mean anything. It is simply an adjustment to make sure that the bill reads the right way when the check comes in.

That is the way it all remained, ladies and gentlemen, until April of 1974. Then, acting on the advice of his lawyers, Paul Grossinger sent back the money, which he and Leon Greenberg had stolen from the track. He got a certified check, sent it to the track with a cover letter, sent a copy of the cover letter to all the directors and to Greenberg and resigned the positions of director and vice president that he had held since he was one of the founders of hte track back in the late 50's.

Mr. Fahringer promised you in his opening another promise he didn't fulfill that he would prove to you that Grossinger was motivated by somebody else's hatred for Leon Greenberg. There is absolutely no evidence of that in this case and the very fact that that statement has to be made shows you what the defense is trying to do in this case, to get away from this very, very clear evidence of guilt.

The fact is that Grossinger sent the money back to the track. The check came to Schoonmaker. He took the check and gave it to Greenberg. A couple of days later Greenb erg gave it to him and said, "Put it in the safe."

There was no record made of the check on the

corporate books. It is a certified check for $4856.16, April 1974. It was placed in the safe in April of '74 and it remained there for more than a year.

This envelope, Mr. Schoonmaker put it in, says, "P. Grossinger" on the outside. It stayed in the safe for more than a year until it was pried out with a subpoena.

Here is another area where Mr. Fahringer's promises to you have gone unfulfilled. The evidence is uncontroverted that that check was placed in the safe at Mr. Greenberg's direction.

He tried to put it off on the track's lawyer, Mr. McBride, but even Schoonmaker wouldn't go down that road. He testified, even on cross-examination, it wasn't McBride who told me to put it in there, it was Greenberg. I want to talk to McBride later on about the check, but Greenberg told me to put it in there.

You didn't see McBride in this courtroom. You didn't see him telling you the check was kept there on advice of counsel.

The evidence in this case is that the check was placed there at Leon Greenberg's direction.

There is something very important here before I close. I don't want you to forget this.

Obviously, if Mr. Greenberg had instructed Schoonmaker to cash this check and deposit it to the track's account, he would have admitted that the funds had earlier been stolen and that this money really belonged to the track. But what's most important is that you realize this, now, we are dealing with sophisticated, astute businessmen here, what's most important is that if the outings had taken place and if the money really belonged to Grossinger's and not to the track, this check would have been fired back with a letter to Grossinger's perhaps saying in polite but firm terms, Paul, you are full of baloney. These outings took place, this money is yours, the track owed you this money. You are being very nice, but keep it.

But that is not what happened. What do they do? They bury the check in Schoonmaker's safe because Greenberg doesn't know what to do.

You didn't hear that from Mr. Fahringer in his opening, did you? You didn't hear him tell you why the check wasn't sent back with a letter saying the outings really took place?

You heard him say he would give you a completely innocent explanation. Listen during Mr. Fahringer's summation to you for that explanation

because there is certainly no evidence in this case except that the check was held conveniently stashed in the safe by Schoonmaker, almost $5000. It's as good as cash, a certified check, money set aside with absolutely no record on the corporate books.

What was done with that check is typical of Leon Greenberg's actions in this case. Put it away. Cover it up. Tell everybody it's for outings.

When the truth comes back in the check, stick it in the safe.

Can there be any question about Leon Greenberg's guilt with that kind of evidence?

You know, under our system, the government has the burden of proving Leon Greenberg's guilt beyond a reasonsable doubt. Heis charged with conspiracy and mail fraud. Judge Pollack, not I or Mr. Fahringer, will give you the law and explain to you what the law is on that.

In simple terms we have proved to you that Leon Greenberg used and caused the mails to be used in furtherance of this scheme to defraud the track.

He did it with Grossinger at the end. It was obvious to him what was going on and Roth got involved. The use of phony bills shows you that he intended to

defraud the track.

It is quite simple to understand. Grossinger and Greenberg had known each other for years. Mr. Fahringer asked Grossinger if Leon Greenberg asked him to do a favor, wouldn'tyou do it? Sure. He knew Grossinger would go along with that.

He knew that after Grossinger told Rothman to do what he was told, Roth would go along with it, too.

He knew the mail would be used. Obviously he wanted the mail to be used because that was the normal way this thing was done. You don't start sending couriers and raising suspicions when you are trying to cover something pu and make it look normal.

Finally, to make sure that the whole deal looks entirely proper, when it is phony, he gets the chairman of the board to assign the check and he announces it to an executive committee meeting. He doesn't announce that the money is going for the bar mitzvah, ladies and gentlemen. He says, no, it is paying for horsemen's outings.

Mr.Fahringer is now toing to speak to you about his version of the evidence in this case. I ask you to remember this: It is your recollection of the evidence that counts here, not what I say and not what he

says, but you see if when Mr. Fahringer speaks to you your recollection of the evidence in this case doesn't coincide with what I promised you the government would prove in my opening, what we have proved, as I have just shown you.

Because we have the burden I get an opportunity to make a short rebuttal here after Mr. Fahringer speaks and before that I want to thank you for your patience in this case, particularly I know it has been hot in this room and uncomfortable. You have been very good to sit here under those circumstances and I hope that my words and the way the government has conducted this case hasn't added to the heat in this room at all.

In any event, I leave you with this word before I leave you to Mr. Fahringer: You know, regardless of how candid and forthright and sincere we lawyers may sound, the evidence came from the witnesses and from the silent witnesses and when you apply your intelligence to that evidence and your common sense, you are going to convict Leon Greenberg.

Thank you, your Honor.

THE COURT: We will give the jury a five-minute recess now. You may go out.

Summation by Mr. Fahringer.

(The jury left the courtroom.

(In open court; jury present)

THE COURT: Mr. Fahringer.

MR. FAHRINGER: If it please your Honor, Mr. Kingham, ladies and gentlemen of the jury:

Leon Greenberg stands before you charged with six serious felonies and if found guilty by you will be forever condemned to a felony conviction. That simple statement suggests that awesome solemnity of the occasion which finally brings us face to face.

I would like to start my final argument to you by sincerely and very genuinely thanking you for the very careful attention you have given this case throughout its duration. I must tell you that there was never a moment when we didn't feel as though we had your undivided attention and for that I think you deserve congratulations. I could see you leaning over to hear every witness and to see every exhibit and that is the kind of attention we think this case deserves and we were happy to have that from you.

Now, I think the place to start in this case is with the charge. That isthe blueprint upon which the prosecution must build their house of proof, as it were, and build it beyond a reasonable doubt.

Summation by Mr. Fahringer.

The indictment here charges very simply that Leon Greenberg defrauded or stole from the Monticello Raceway this amount of money of $4856.16 and that the manner in which it was accomplished was that fictitious bills were prepared and sent to the raceway. Now, that is the charge and that is the charge the prosecution must prove beyond a reasonable doubt.

I don't want to in any way intrude into the province of the court here, but from time to time Mr. Kingham has said to you, well, they didn't prove this, they didn't bring in that witness and I think one thing that will be made very clear to you at the end of our argument by Judge Pollack is that the prosecution bears the burden of proving this case beyond a reasonable doubt.

We have no burden at all, so that in terms of judging, well, what witness should have been brought in by what side is in my judgment irrelevant to the proposition that the prosecution must prove their case beyond a reasonable doubt.

Now, on June 16, 1975, Leon Greenberg came into this very building and was taken before a judge, and advised ofthese charges, and he entered a plea of not guilty when he was called upon to respond to them. By that plea of not guilty he vigorously denied that he had defrauded the racetrack of this amount of money. He denied that he in any way was involved in the preparation of any fictitious bill.

And as I mentioned to you once he did that, in that very formal proceeding, then the law provides that he is presumed to be innocent, and the prosecution must then come forward and prove those allegations beyond a reasonable doubt. In other words, without again explaining the law to you, in other words, if after you've considered carefully all the evidence in this case, from our standpoint, if you have a reasonable foubt, an honest doubt as to whether or not the horsemen's outings took place, then we'll urge that we're entitled to an acquittal, or that there was an attempt in some way to defraud the raceway.

The prosecution has to prove to you ... ond a reasonable doubt that those outings did not take place and that we are not obliged to prove to you that they did, albeit we produced evidence that we think

supports that.

Now, let's talk a little bit about witnesses.

Leon Greenberg, I told you at the very outset of this case was not present at any of the outings. It is our defense here that these outings did take place. We think we have proven that to you. I'm going to address myself to that evidence in just a moment. That he wasn't there.

But I've got to tell you frankly that he cannot say, from his own knowledge, direct proof, yes, all five of those outings took place. He may know from the other evidence. But what we tried to supply you with in this case, and I hope commendably so, is evidence from people who were eyewitnesses, who were present, who did know, as compared, for instance, to the evidence that was produced here by the prosecution, in the terms for instance, of Mr. Grossinger, who was not admittedly at the clubhouse and does not know whether or not they took place or not, as compared for instance to Mr. Roth who finally conceded yes, I can't say that on July 8 or on August 8 of whatever dates apply here, that there was or was not an outing. I wasn't there.

And when he said to you, I know now they didn't take place on cross-examination I hope I

demonstrated to you satisfactorily that he really doesn't know. He's working from the records.

And even, and I will talk about Paula Bergman at great length in a little while, even Paula Bergman I think, if you read, we have the entire transcript of the trial here and you can have any evidence read back to you that you want to have related to you, on an issue that you think has to be resolved in your own mind, even she said, yes, I say there were no outings, because there are no slips and she doesn't say that from her own recollection.

We do challenge the proof of some of the witnesses here, andyou take a man like Mr. Grossinger, who we were able to develop some very favorable evidence from, but we challenge his recollection, we challenge as we have a right to, being presumed to be innocent, we challenge what he said about that original agreement and I'm going to talk toyou in great detail about that.

But I want to start at the very beginning with what I consider to be the most important proof that we have produced in this courtroom. You know, Mr. Greenberg's honesty has been challenged. You heard Mr. Kingham call him a thief. He said he stole

money from the raceway. The law says that when a man's honesty or integrity is challenged, he can bring forward for a jury evidence of his reputation in the community of being an honest man, of being a truthful person.

Now, I want to devote myself to that for a moment without getting into the law. If that were not so, I question you, what would it all be worth? I mean, what sense does a man have in striving to earn a reputation of being truthful and of being honest if at this critical moment in his life, when that accusation, and that is all this is, that accusation is made against him, he jannot bring men of the stature and the caliber thatwe have produced in this courtroom, whose reputations themselves it must be apparent to you were unimpeachable and unquestionable, who come forward and say, this is what he is, he has a reputation in the community, I have known him for 22 years, I have known him for 17 years, I know him for five years, and he has the reputation of being an honest man. And that proof, I submit to you most respectfully, was never challenged,was never attacked.

You know it was William Shapespeare who said

he who steals my purse takes nothing but he who robs me of my good name takes that which does not enrich him but leaves me poor indeed.

And I think that applies here. This is a common sense rule that we live with. Wednesday of last week we were all strangers. You have never met me before, I had never met you. You had never met Mr. Greenberg. He stood here facing a very serious charge. And today, as you sit here, you know an awful lot more about him. And that is the purpose of a trial, and bringing forward this evidence for your inspection and consideration.

Now I must tell you this: He doesn't have to put his character in issue. That is a venturesome step he takes, because when he does, the prosecutor can cross-examint those character witnesses about anything that might disparage that reputation, or dishonor it. As a matter of fact, the law is they can produce to the contrary if it's available.

You did not hear in this courtroom one single word of evidence that in any way besmirched his unchallenged reputation for truth and honesty that he has earned over the years.

Now, one other statement. I believe that you

will be instructed at the end of this case, and yuou will take that instruction from Judge Pollack, of course, that if you consider this character proof, his reputation as being an honest man, with all of the other evidence in this case, that in and of itself can create a reasonable doubt in your mind, considered with all the other evidence, where otherwise one would not exist.

Now I commend to you to listen most carefully to Judge Pollack's instructions on the law and particularly that part because that is the importance of that evidence. That is the power of that proof, that if you are convinced that he has a reputation for being an honest man and a truthful person, then on that evidence, considered with all the other, you are authorized to return a verdict of not guilty based upon an honest reasonable doubt due to that proof.

Now what do you know today that you didn't know last week about the man you sit in judgment of? Well,you know he was raised in the Monticello area. You know that he became an assistant district attorney. You know that he started working at the Monticello Raceway as its lawyer. He didn't start at the top.

Mr. Paul Grossinger, who's been a director and a vice president since its inception;you

heard Paul Grossinger say that in 1958 he became the personnel director. You heard him say he worked 12 and 14 hours a day, seven days a week, and how he devoted himself unsparingly to that track for 11 years, when in 1968 he was elected president by the board of directors. He came up the hard way. Nothing was given to him.

You didn't hear one word of evidence in this courtroom where anything was handed to him. A true story of struggle, ambition, and I think, as I develop my argument with you that will become important in judging this man.

And most important of all, he never forgot where he came from. He never forgot his beginning as exemplified by some of the character witnesses who came into this courtroom. Mr. Grossinger told you, the prosecutor's chief witness, how he had worked with him on many, many charitable projects.

John Duncan tells you thathe first met Leon Greenberg in working together in the Monticello group. This isn't a man that doesn't know Leon Greenberg. This isn't a man who has come in here just to talk glibly about his reputation in the community. And then he said, and I will quote from the record, he has always taken an interest in minority

groups and he has helped me in every one of my programs.

most important of all, and please understand the significance of this statement, John Duncan and his family were at Leon Greenberg's bar mitzvah. Why is that important? Because he knows Leon Greenberg. He knows him for what he is and he can come in here and he can testify as to the people he knows and his reputation and he says that his reputation for honesty is beyond question.

Father Isacsson, he was at the bar mitzvah too. Doesn't that tell you something? In the sense that these are men who know of what they speak and are not going to come into this courtroom and perjure themselves because they receive the contribution to their seminary? I will admit Mr. Kingham I think in his own mind felt he had some fun with Father Isacsson when he waid, well, don't you get contributions from the Monticello Raceway?

He said, yes, I get a thousand or two thousand dollars a year.

And you know what I'm proud of and I'm going to tell you that is in this record, some person might think me foolish to say, he also said that those contributions started when Leon Greenberg became

president. Well, we are proud of that. And I don't for one moment think there is a person on this jury who is going to question the integrity of Father Isacsson because the Monticello Raceway made its facilities available for a program, a Joe Namath night where $5000 was raised, or because through Mr. Greenberg they have given a thousand or two thousand dollars a year.

Father Isacsson tell s you thathe has a reputation for being an honest man, and being of high moral integrity.

What about Rabbi Kreitman? How did he get to know Leon Greenberg? Well, he got to know Leon Greenberg because he went to his home fora religious study group. He taught his children in Hebrew school and Leon Greenberg was eventually elected president of the Hebrew day school, and he bar mitzvahed both of his sons, he presided over the bar mitzvah, and he tells you in his opinion he's of high moral integrity.

Do you think anyone of these persons would come in here, simply to help this man out because they thought he was in trouble and not tell you the sworn truth from that witness stand?

How about Henry F. Werker? United States

District Court Judge, appointed by the president of the United States for a lifetime. He's beholden to no one. Former judicial officer in the Monticello area, has known Leon Greenberg for eight years, retired lieutenant commander in the navy and he sayd he has an excellent reputation for truth and honesty.

What about Howard Samuels? Any one of you believe for a moment that Howard Samuels, a man of that statute, of that reputation, would involve himself in this case if he didn't honestly believe what he told you, and he was his adversary, they fought, he told you, they argued over the offtrack betting situation which admittedly we concede was a threat to the Monticello Raceway and other racetracks.

Lieutenant Colonel on Patton's staff. Served in the cabinet, United States Cabinet of President Johnson.

And he tells you that his reputation for honesty has never been questioned.

Joseph Wasser, sheriff of Sullivan County, served in the adjutant general's office of the United States Army, town justice for 19 years. Leon Greenberg appeared before him as an assistant district attorney, working nights as a prosecutor in his court that served

in the evening. He's known him for 25 years. And he says he has an excellent reputation for honesty.

And last but not least, Ann Kaplan, who is the mayor of Monticello, a remarkable woman, married, two children, herself, president '69 Jewish Community Center and she comes in and says he's got a good reputation for truth and honesty

And even Paul Grossinger and Bernard Roth, two of the prosecution's prime witnesses, when asked by me, "Mr. Grossinger, Mr. Roth, have you in all of your dealings with Mr. Greenberg, including the period of time covered by this indictment, 1970 and 1971, have you ever had any reason to question his honesty, " both of the witnesses: "No."

Now, folks, let me tell you something: I promise you you can sit on criminal cases for a long time before you will ever hear the two chief prosecution witnesses respond in that fashion to that question.

And Mr. Grossinger, I asked him the question, have you ever had any reason to question Leon Greenberg's loyalty to the Monticello Raceway, an institution that he has worked for day in and day out for most of his adult life.

Well, I want to be frank with you. If I repeat myself forgive me, but when a man reaches this stage in his life, he should have the right to fall back on a reputation earned in that fashion, harvested and brought into this courtroom through the mouth of these esteemed men. And you have every right, it seems to me, and I argue to you when you go to that jury deliberation room and you consider this evidence, you say, what about this man's reputation, is he the type of amn who would do something like this that he is accused of?

And listen to the judge's instruction and see if that evidence in and of itself does not create a reasonable doubt that would authorize a verdict of not guilty, on that evidence alone.

I submit to you most respectfully thatyou don't have to rely on just that evidence. I think that evidence in and of itself would authorize a verdict here of not guilty, but let's discuss the facts of this case that Mr. Kingham has related to you.

Did the outings take place or did they not? Well, you know, I don't know what more evidence we could have produced. I'm standing here thinking to myself, you know, who else we could have brought in.

When you want to prove a fact happened, it occurred to me th- the best evidence would be the people who were there, you know, the people who participated.

Now, that was the horsemen, that is the golf pro, that is the man who prepared the meals, made the arrangements for them. So we brought up the golf pro from Florida. He was gone, left. We located him in Florida. Peter Donnelly. Never met Leon Greenberg in his life, never met me, came in here, took this witness stand, and he said, yes, he remembers that year, because it's the first year he ever worked there.

Summation by Mr. Fahringer.

You know, this isn't a situation where a fellow is saying, "Well, gosh, I was there 15 years, let's see -- 1970." He said, "That's the first year I started there. My first job. They had opened a new 27-hole golf course."

And he remembers at least six outings he says bedause he says it seems to me they had them every two months. You know, maybe I am at fault here, but it came out in a different way, one of the horsemen said that they had gotten three brand new golf balls every time they played. Do you remember Mr. Curran said, I remember because we always used to get three brand new golf balls and that was on theRaceway too. Well, of course, it occurs to me, of course, the head pro in the pro shop probably handled that.

I can easily understand when they brought up 27 golfers, 38 golfers, 41 golfers, he would remember that pretty good if he sold to each one of them a package of three golf balls for maybe $3, $3.50, $4, whatever they were selling for at that time.

But he tells you that there were 25 to 40 men there. And they took place. He said they happened. They occurred. It wasn't attacked. He wasn't made out a liar.

Oh, I don't think you should be misled by this

cross-examination. Well, you say they occurred on July 8th? Well, of course he can't. But I think there may be an instruction to you that if there is an error in dates here, that is of no moment; if the outings occurred, that is the crucial issue. And he told you that they occurred.

He also told you about the blanket slip that they used to make out. This is our exhibit, and fortunately we found one that Paula had signed that we are grateful for, because you recall her testimony, she knew really very little about blanket slips and she said, if I recall her testimony correctly, they were not made out. This one in 1973 is made out by her, it covers 13 carts or 26 golfers and it is in every sense of the word a blanket slip.

Now I am going to deal in a moment as to where these blanket slips would be, but in any event we know there were blanket slips and Mr. Donnelly said this is exactly the way weused to do it.

But you know, my father used to tell me that a handful of common sense is worth a bushel of learning, and I am going to ask you throughout my argument to rely on your God-given common sense.

If you were in the pro shop, and 38 golfers came up there to play golf and it was all going to be charged

to one outfit, one person was going to pay for it, let me ask you this: Would you feel it sensible, sufficient, adequate to make out one slip and put them all down because the golfers aren't going to pay for it, it is all going to be paid by one client?

Well, I will leave that to your good judgment.

The one thing that I didn't explain, that came out on this trial was when Mr. Donnelly told you that he was still very friendly with Mr.Grossinger, and he said, when he received a call from our investigator, he felt obliged to call Mr.Grossinger. And he said, I have been contacted by someone, Mr. Cossolini, and he has asked me about these outings and I told him what I knew about them happening in 1970, and then the Judge allowed him to respond to my question as to what Mr.Grossinger said to him, and I quote from the record at page 358:

He agreed that we had these tournaments and said, just tell them the truth.

That was never disputed. Donnelly calls Grossinger, he says, they have asked me about these outings, which I told them about, and Grossinger agreed with him that they had taken place, but he said, just tell them the truth.

Now I think that is a rather decisive disclosure.

You talk about reasonable doubt. It seems to me that that could form in your minds a substantial reasonable doubt.

Then there were the horsemen; James Curran -- incidentally, apparently James Curran never signed an attendance slip but of course we learned then, it occurred to me, on my redirect of him, that he was a member, because he had taken the horses over with all the trappings and stuff, he was a member, he could go over any time he wanted to, he had a free membership at the golf course, so he wouldn't have to sign one. Mr. Manzi told you he signed in. Mr. Manzi won a trophy in 1970, that is how he remembers it. George Berkner was racing at Liberty Bell. He came up here and said hehad dinner there, and he remembers going over there four or five times in 1970.

Herman Carbone, from Yonkers, he came in and testified he remembered going there.

Bob Del Campo, that was the first year he raced at Monticello Raceway, and he said, "I remember going over there, because that was the place we all loved to go to, the food was so good, the outlay was so great."

I think a fair assessment of this testimony is that outings took place, that there could be anywhere

from 35 to 40 men that appeared, that the wives went, they were guests, they took other people, and they never signed any golf slips. Jim Curran told you he never signed any golf slip, and I think one or two of the other witnesses said the same thing.

Now, we also brought in proof of an attendance slip. We were able to show you an attendance slip or at least there was testimony he listed of an attendance slip at another place that was used, and because that was converted into a bill it was kept, whereas the others were not.

Now, I must confess, I don't understand all of this heavy weather over, you know, where the attendance slips were kept. I recall Mrs. McCullough testified that her recollection was that they were kept in the publicity department.

My recollection of Loretta Kratz' testimony was yes, she had seen them and that they were brought in to the publicity department. But if my recollection differs from yours, of course you take your own.

What about Hyman Hoffer. Hyman Hoffer came in here and he is an employee of Grossinger's. He has worked there for 33 years. He is an uncle of Paul Grossinger. And he says, I remember getting the call. They would call

me because that was one of my responsibilities, and I would make arrangements for the meals; either at the clubhouse or at the -- by the pool or in the dining-room. And he said there were no slips made up at all when they at at the dining-room and the wives and the children came.

Now, I think that is rather compelling evidence that the outings took place. And I urge that if the outings took place, then the Monticello Raceway was not defrauded, nor was there an attempt to defraud the Monticello Raceway because they had taken place prior to any discussions at all with Paul Grossinger or Bernard Roth.

Let me just relate something to you that Paul Grossinger said while he was on the witness stand. Mr. Kingham said to him, at page 185, "To your knowledge, had the outings taken place?"

Now, please listen to this answer if you will, please.

"A I know there was at least one outing, at least one outing that had taken place. The others I had no knowledge."

He doesn't say they didn't take place. He said "I had no knowledge."

If there is anyone on this jury that seriously doubts that there weren't outings during that year, then

I would just be very disappointed with the kind of proof we brought in here. I challenge Mr. Kingham in his rebuttal to tell us what other evidence we could have brought in. It seems to me we have brought it in from every sector. We brought in the men who played, we brought in the golf pro who supervised the outings and we brought in the man who prepared the meals or at least was responsible for them.

Now against that mountain of evidence they have produced Paula Bergman. I have no serious quarrel with Paula Bergman, although I got the impression that her testimony was somewhat programmed, not by Mr. Kingham, but it just seemed to kind of come out like a tape recorder, but in any event, I don't want to be harsh with her. I asked her whether she could testify from her own knowledge that these outings didn't take place, and even though we went back and forth to the point of tedium, she finally did say, no, I say that because of the records.

Well, let's talk about the records. Now, you are going to have them there and you can do whatever you want with them. Our figures -- we were supplied with copies of these by the Government, I want you to know that, so we did our computation. We found 465 slips missing. Maybe that has something to do with the way she computed

them and the times and the days and whatnot. Anyway you will have them and you can do what you wish with them.

In any event, in the period of time that she claims she computed she said there are 50-some slips missing on the very days in question.

But again, let me prevail on your common sense. Pete Donnelly said, as I examined him -- and as a matter of fact, Mr. Roth and some of the others -- that there was two procedures. If a person paid cash, we would take the cash with the ticket up to the pro shop, or if it was charged to a room, I mean, to the cashier place in the hotel and I kept saying, "Well, what about if it was a situation where it was being kind of billed to a corporate client?"

And Mr. Donnelly I think said, "Well, I don't know, that would have to go in a separate file."

But, it occurred to me now that Mr. Roth told you that there had never been a ledger card made up for the Monticello Raceway -- the first ledger card made up for the Monticello Raceway which was in their own cashier's office was made up in October or November of 1970, when they applied the $4800. So if these slips were sent up to the cashier's office, I don't know where they would post them because apparently there was nothing to post them on.

In any event, I have got to tell you people

straight up, we didn't take care of the golf slips. We proved to you that the outings took place. I think we have done that conclusively. The fact that they say well we can't find any slips or any blanket slips or we don't know what happened with them, those are just the slips, remember, that went up to the cashier's office where it was a cash or a room transaction.

There are no slips in there that were maintained or kept in the golf shop. Those you remember Paula Bergner said were destroyed or thrown away.

You remember also she said that there would be anywhere from 200 to 250 golfers or slips on a busy day. That might be two on a slip, I realize, I am not trying to you know mislead you in that way. But on the dates that we have in question, on the days July 8, 22, 25 and 26, you have got 42, 59, 54, 39 and 63. How they account for that I don't know. It is in July and August when the course is busy and I would think that would be a time of year when they would be close to their maximum, if they were doing it all on one machine, or maybe there was another machine. I can explain that to you.

If there were two machines with serial numbers on the plates, and one type was written on one andanother on another, I don't know and I don't propose that to you

as being the fact. But I say that we can't account for why the slips were missing. We have just felt in our mind that we have proof even to you that the events did occur, and we contend and urge that that proof is left unchallenged and undisputed in this courtroom.

Now let me try, if I can, to deal with some of Mr. Kingham's claims. He is preoccupied with this $1200 payout slip. He keeps saying that Leon Greenberg got that money.

I hope to convince you right now that he didn't get that money. The slip is right here. We brought in Hyman Hoffer, and again, forgive me for telling you, he is an employee of Grossinger's, he is not an employee of the Raceway, he is the assistant maitre d' over there, and he says that the Greenberg bar mitzvah, he recalls in the afternoon, when I assume the cashier's office is open -- this is the 7th now, November 7th -- this slip you realize of course is dated November 8, the next day -- he says that on November 7, in the mid-afternoon, Leon Greenberg up to him and said, "Hymie, I am very pleased and I want to take care of the appropriate people, what do I do," and he said we will go to the maitre d' and he went over to Dave Giver, and he saw him talk to Dave Giver, he saw him reach into his pocket and take out some money and give it to

Dave Giver. Now I don't care, frankly, whether you think he distributed that to other people or whether he kept it all himself, that is not important.

The fact of the matter is that man's testimony was uncontroverted, unchallenged. Why would Leon Greenberg, if he knowingly had signed a slip for $1200 in gratuities, assuming it had been filled in on November 7, certainly not dated November 7, why in the world would he go over to Hyman Hoffer and say, what do I do, who do I take care of? Who shall I speak to? And then go to Dave Giver and reach into his pocket and pay out the money? Well, I will tell you why. There is an answer. And it lies right here. You remember Government Exhibit 8 in this is the blowup of that. That $1200 was paid out the next day, on November 8th. See it? Pay out, $1200. Not on the 7th. Bear in mind, I would think that if you were a waitress working an afternoon affair, not like an evening affair, and you finished the affair, you would like your money as soon as youcould have it.

This was paid out the next day. This $75, you remember, Bernard Roth talked about being paid out some months later, because they had overlooked it. Leon Greenberg never signed for that. Leon Greenberg never knew about that. He admitted that was just put on this bill.

Now, doesn't it make sense that on the next day when there has not been one word of proof that Leon Greenberg was at Grossinger's and I take serious exception to Mr. Kingham saying he went over there the next day. That is their burden. That is their burden.

You know he was there on the 7th. That was the bar mitzvah. There is not one single iota of proof in this case that he was over there on the 8th.

Do you really expect that he went around to the waitresses or the busboys and handed out money to them. Why that is preposterous.

But I will tell you whose name does appear on this slip, Howard Bern's name appears.

Now, they have the burden of proof in this case. It is Mr. Kingham's contention that Leon Greenberg got this money and I think Mr. Kingham is a pretty good lawyer. He talked to Paul Grossinger, he talked with Bernard Roth, I have to assume, being a good lawyer and having had this exhibit for some time and seeing Howard Bern on it and knowing that Howard Bern is the general manager of Grossinger's, I have to assume that he talked to Howard Bern. I have to assume that if Howard Bern would have said one word about Leon Greenberg getting this $1200 in cash, he would have been in here so fast it would have

made your head swim.

I askyou to infer from that silent witness, if we are going to talk about silent witnesses, let's talk about Howard Bern, the silent witness. I have to ask you to infer from that silent witness that there was no $1200 paid to Leon Greenberg. That was handled in the same way as the $75.

What about the $35 function rate? Mr.Grossinger told you that when a waitress or a busboy received a $35 flat rate, there is no gratuity attached onto tha. as compared to serving and working on a regular basis.

Do you know what Mr.Greenberg was billed at on this cost billing for the labor on that day including gratuities.

$1437 labor. $225 gratuities to the barmen. $1200 gratuities generally, plus whatever he paid out of his own pocket, which came to $2862, plus the $75 and that if you add up the number of people who worked on the project, that comes to about $100 a person.

Now I ask you, you talk about the word rip-off, if you are going to use that term in this lawsuit, and I don't mind adopting it at all, then it seems to me that there was a little bit of a rip-off there on a bar mitzvah that wa supposed to have been conducted on a

cost basis.

Let's talk about the return of this check. Well, there isn't any question they proved that Paul Grossinger returned the check and I have to tell you candidly that I made a promise to you in my opening that I would establish that Lazarus Levine hated Leon Greenberg and I didn't. I didn't. I tried, but I didn't.

Now, I did establish from Paul Grossinger that he was called down to Lazarus Levine's office. He didn't know what it was about.

I did establish that he had never thought he had done anything wrong until Lazarus Levine told him.

I did establish that it was Lazarus Levine that dictated the letter; that it was Lazarus Levine who told him to resign and that it was Lazarus Levine who told him to return the money.

I did establish all those facts I hope to your satisfaction.

Now, they get the checkand they get the resignation.

I did establish through Mr.Schoonmaker that Mr. McBride from time to time was on the premises and he is the general counsel for the company.

I did establish that Mr.Schoonmaker talked to Jack McBride after he put the check in the safe. Are you going to buy for onemoment this argument of sending the check back and the check coming back and sendin the check back. We could sti be doing that by return mail, sending the check back and forth.

Isn't the answer that we didn't cash the check. We didn't believe that we were entitled to these funds so we didn't cash the check.

You know, of course, that to this day the $4856.16 is still in the Grossinger account. It is still in their bank account because the check is certified, it may be allocated, but it is still is money. Until someone endorses that check and cashes it, he still has the money, so Grossinger still has this money.

I think really and I like Mr. Kingham, we are not enemies, but I must tell you that I think that shows in a way the desperation of the prosecution's case here. To make a claim like that, the whole case seems to rest on you should have sent the check back and the answse to me legally seems that we haven't cashed it, so we haven't received the funds.

Of course the check was ultimately taken by subpoena.

Now, what about the bill being reduced by exactly $4856.16. I am sure Mr. Kingham was saying, well, I wonder how Mr.Fahringer will deal with that, that is the exact amount of the horsemen's bill. How is he going to handle that? How is it that the bar mitzvah bill is reduced by the very penny, the very cent of the horsemen's bills.

Well, first of all, let me tell you this: We are not obliged to explain to you what went into Paul Grossinger's mind.

I want to go back for a moment with you and talk just for a moment about Paul Grossinger. I don't think I treated him too harshly in this courtroom, but that doesn't mean for a moment that we don't challenge what he said. Listen very carefully if there is any transcripts read to you about what he said on that original agreement. It is very vague. You know, of course, that he solicited Leon Greenberg for the bar mitzvah, he concedes that.

Then we part company. We part company. He says that he said he would do it for cost. Our position, which I think I have proved and I will show you in a moment, is that the arrangement was he would do it on a different basis.

Then he says he got a call from Leon Greenberg who said that he wanted certain billing handled in a way

and that he had approval. Now, I don't think the testimony here from Paul Grossinger is that he had approval topay part of the bar mitzvah bill through the Racetrack. Remember what I told you in my opening and I think we have established it. He said, if you are going to do this for me on this basis, then send us bills for the outings w ich took place and Mr.Grossinger said speak to Bernie Roth, and Leon Greenberg said, these outings took place, here are the dates, here are the people who attended because he had the attendance sheet.

But this is Paul Grossinger's testimony and it is under Judge Pollack's examination. He said, without ever hering from Leon Greenberg, now this is uncontroverted and I think this is of great importance, he never hears from Leon Greenberg, the bar mitzvah is held.

If you accept our presumption of innocence, we presume we are going to be billed for the costs over and above any food and one day he gets a bill for $5843.

Now, he thinks that is pretty high for liquor. In his mind he has paid for everything else and so he sends back a letter open and above-board, "Please itemize this bill."

It goes back and his secretary signs it. Nothing secret or clandestine about it.

Then Paul Grossinger on his own without any prompting from Mr.Greenberg or urging from him goes to Bernard Roth and he says, reduce that bill down by this amount. He said at the trial at page 188, I instructed him to take the cost of the outings off the bill.

Judge Pollack at that point inquired:" Is this an understanding thatyou had with Mr.Greenberg?"

"A "No. It was a conclusion I drew myself, sir."

That is the evidence that they would have you condemn Leon Greenberg for a felony conviction on for the rest of his life.

"No, it was a conclusion I drew myself, sir."

Admittedly later on he goes back and says that is what I thought the original understanding was. Leon Greenberg never told him to reduce that bill by 4856. As a matter of fact, giving us again the benefit of your common sense, suppose you were sitting where he was and five months after the bar mitzvah you get a bill for $987.09. It looks pretty authentic, doesn't it, not for $900, a thousand dollars or $1500, $987.09. Could there be any question in your mind, if your understanding was you were to pay for the liquor and he sends you a bill and you sent a check?

Please understand when I say this, I don't

mean to disparage Mr.Grossinger. He obviously has a hearing defect, a physical defect. Now, I don't know whether he had that in 1970 or not. I don't know whether that would contribute to his misunderstanding. I don't rest my case on his hearing defect. Mr. Kingham asked him, do you always wear a hearing aid,and he said, no, I don't.

Certainly there is a misunderstanding in this case and certainly when you get the law and you hear Judge Pollack's instructions on the presumption of innocence, the benefit of the doubt has to be given to Leon Greenberg.

Mr.Roth said he never conspired with anyone to defraud the Raceway out of money.

Mr.Grossinger says he never had any reason to question Leon Greenberg's honesty.

There was one other thing I said to you in my opening and I misspoke and I apologize for it. I think I told you that the outings had been at Grossinger's complimentary, but it turns out now they weren't. I had overlooked that I think it is Government Exhibit 28, which is a bill for horsemen and it was on June 29, 1970, and it is a bill from the Grossinger's, it is to the Raceway, and there is a bill there for $108 in golf balls, if that is for free golf balls for each man, I figure that would work out to 36 people

and three cart rentals, I can't explain that to you except that the golf balls,$108 for golf balls works out exactly, I think, to 36 people.

But there was another outing. They were billed for it and so it seems to me that Mr.Greenberg had every right to say, look, send us bills for the outings if you are going to do this for me and I don't see anything criminal about that, fraudulent or illegal.

Now, what about the understanding? I am not going to spend much time with you on this and I ask your patience, but going back to G8, our position is that if the arrangements were as we contend, that the food was to be free and the only thing he was going to be charged with was the liquor, you have the liquor, I don't care whether it is at cost or wholesale, at least they entered them, the figures could be adjusted and you have the gratuity put on here, we claim that it was unauthorized, but at least they put it on and you put the room on. What is the importance of that late gratuity? By that time they had figured the food, hadn't they? The slip appears as a matter of fact on G8 and this, of course,you understand and I don't think there is any dispute about this, when we made the blowup, we made the blowup from the Xerox copy that

had been furnished to us by the Government.

MR. KINGHAM: I object to that, your Honor.

THE COURT: Yes, there is no evidence of that at all and it should not be mentioned.

(continued on next page.)

MR. FAHRINGER: All right, your Honor.

The blue slip talks about 312 meals, but there is no charge on the master bar mitzvah account. Now, doesn't that record support our contention? You know, it was Carl Sandburg, the famous biographer, who said the best witness is a written paper. You don't change that. It doesn't have a memory you have to worry about. Here it is as big as life and the only thing that is entered on this master bar mitzvah card right until today is the liquor, the gratuity and the room and everything else is omitted.

I urge that that is pretty compelling evidence that the arrangement here originally was as we contend it was just for the payment of the incidentals above the food. The food was to be contributed.

I have to take issue with one other matter and I am happy that we have so many ladies on this jury because as far as the food costs are concerned, I want you, if you have some time, to take a look at our Exhibit S. We put this in evidence. The government didn't put this in evidence and this exhibit is the alleged cost of the food.

Now, bear in mind I suppose no one ever expected that Mr. Greenberg was going to see this. You

remember he got a flat bill of $5800. But look at the cost in 1970 of the food.

Six spiced corn beefs, $120. That is cost. Mr. Roth tells you that they worked on the basis of 25 per cent or one third so that the retail cost would be either two times that, perhaps three times that.

$120 for six corn beefs.

Go down this list and check some of these other items and I rely on your experience. Bear in mind they buy in large quantitities and they can buy things a lot cheaper than you can. 300 half cantaloupes, $165 or 50 cents apiece, that is cost, so I guess at retail they would be a dollar apiece.

It obviously doesn't make sense and so that that again I urge that upon you because it seems to me that confirms our understanding that it was not on a cost basis.

You know there is a doctrine or a principle that we adhere to that actions speak louder than words and if someone were trying to conceal something, if someone were trying to do something illegal, unlawful, would they go through the procedure when they got the bills of telling Edna Coyle that they wanted a check drawn. They didn't want it machine signed. They

wanted it hand signed and they wanted the chairman of the board to sign it.

She prepares that check and then it is taken to the executive meeting on November 2, 1970, with all of the executive committee members present but one. It is fully discussed with them. The check is signed by Mr. Sussman and signed in person by Mr. Greenberg and sent out and a 25 per cent discount is negotiated in accordance with the committee's admonitions.

Now, that just is not consistent with trying to do something secret, trying to do something unlawful, particularly when you have the exhibit I showed you just a moment ago, the bill that was referred to as Government's 28, which is the outing of June 29, which does not have, of course, a 25 per cent discount. So at least on that outing there was no 25 per cent discount taken off so it seems to me the 25 per cent discount does achieve some importance and the fact that they would take this up at the executive meeting, fully discuss it, consider it and send it out in that fashion I think just wars, militates against any illegal scheme or agreement to defraud the raceway.

I know it is warm and I know you have been listening for a long time and I am just going to ask your

indulgence.

I am wondering what you think of this and how Mr. Kingham explains it to you, although I know he attempted a little bit in his summation. If there was an agreement to defraud the raceway and if the racetrack received the $4800 on November 4th, when it came time to send the bill on March 12, the bill for $5800, why, why wouldn't they reduce it down then, if that was an agreement, if that was an understanding.

I know Mr. Kingham, the only answer he has for it, well, he forgot about it. He forgot about it. He overlooked it.

But, you know, this is a criminal case and it has to be proven beyond a reasonable doubt. The defendant is presumed to be innocent. I don'tthink that satisfies an explaination. Paul Grossinger didn't tell you he forgot about it. He didn't say one word about it. That is Mr. Kingham talking.

I think that is compelling. If there were an agreement, if there were an understanding, wouldn't the first bar mitzvah bill to Leon Greenberg have been reduced down at least approximately to that amount, maybe not to the exact penny, but at least it would have been reduced down by $4800. Not a cent. I do not believe

that has been successfully explained to you.

Now, just before I close, let me mention one other thing to you.

Throughout this trial your voices have been silent, but soon they will be heard. The law provides that your verdict must be unanimous and that simple statement empowers each of you, if you are convinced that this case has not been proven beyond a reasonable doubt, if you have an honest doubt, then you are authorized to save Leon Greenberg from the clutches of an unjust conviction.

In the jury room, one is a majority. That does not mean you are to behave unreasonably or arbitrarily, but recently I read one of the most serious indictments of the jury system I have ever seen. It was a quote from an old English judge that appeared in a law journal and he alleged, "Wretches hang that jurymen may dine."

All I ask each of you is that you not surrender any reasonable honest doubts that you have in this case because of the lateness of the hour or because of any person inconvenience it may cause you.

I must face up to the fact that today the popular thing to do is to go along with the government. That

is the easiest thing to do. It takes a lot of courage to stand up to a prosecutor and say, you haven't proven this case beyond a reasonable doubt, you have not destroyed the presumption of innocence and do not make us accomplices to your failure.

But then boldness and courage are fundamental requirements of a brave juror and I tell you right now I have never for a moment lost confidence in your capacity to return a fair verdict. We know from experience that sometimes disagreement tends to breed compromise.

I urge you now that in this case a conviction on one count is as good as a conviction on all counts because our defense is uniform, it cuts though all six xounts. He either defrauded the raceway, attempted to or he didn't at all.

Someone said that when a person is killed it doesn't make any difference whether he is shot with one bullet oi six bullets, he is just as dead. That is essentially our position here and I want to make that known to you.

I want to say one other thing and forgive me for saying this, but if you want to convict Leon Greenberg, the presidnet of the Monticello Raceway, because he may make more money than you or I do, becuase of

his position, there is nothing in the world I can do to stop that, but if that were the caes, then we might as well tear down the courthouses, burn the law books, do awa, with judges and turn the clock back. Justice has to exist for the well to do just as well as it does for the poor, but we know from experience that indigency or poverty sometimes will produce compassion where a person who is of substance will sometimes produce envy.

I ask you to put allthose feelings aside, as I know you will, and judge this case in the same fashion and in the same manner that you would judge anyone else.

Now the time has come for me to go my way and for you to go yours. Since I'm from Buffalo, chances are I will never see any of you again and you will probably never see me, but I want to tell you how much I have enjoyed having you on this jury and I hope it has been a meaningful experience for each of you. I want to thank you on behalf of myself and Mr. Greenberg for the very kind attention you have given this case and leave you with this thought:

You have bestowed upon you the greatest power that can be accorded any group of people because you are

to determine the guilt or innocence of another human being, determine whether he shall be struck down forever or return to his family and friends. That power surpasses all of us. I knowyou will exercise it. I have tried within the limits of my abilities to furnish you with the honest reasons that I think authorize a verdict in this case of not guilty, but I cannot supply you with the courage to return that verdict. For that it seems to me you must look within your own souls, but this I am convinced of, this I believe with all my heart, that a govenment of a strong and free people does not need the conviction of Leon Greenberg on this pathetic proof, on this impoverished evidence.

If any man, if any person can be convicted on that evidence, then no one is safe.

I ask that you return a verdict in this case of not guilty and, if you do, as I expect you will, I know that each of you can go to your homes tonight and rest your heads on a peaceful pillow.

Thank you very much.

MR. KINGHAM: May I, your Honor?

Members of the jury: I am not an orator and I don't pretend to be so let's put aside platitudes, the appeals to your sympathy because I submit

to you that, like the rest of the defense in this case, what you have heard is a desperate, although well acted, well orchestrated attempt to divert you from the proven facts in this case.

Let's see what the defense has done here. First, Mr. Fahringer made a lot of promises to you in his opening statement. Then the government's proof came in and then the defense began what I call the octopus technique. The octopus technique, if you remember from when you were a child learning about octopi, I guess as we do, that when an octopus gets scared or it's cornered, it squirts ink at its opponents to camouflage it, sort of a smoke screen effect. That is what the defense has done in this case.

What Friday was was smoke screen day around here with this jury. You heard 16 defense witnesses on Friday, ladies and gentlemen, not one of them -- not one of them -- addressed the real facts in this case and what the real facts are that we proved.

You may not realize that among that 16, because they were all jumbled up, cleverly woven in were seven character witnesses. What the defense did here was given you a real scramble. They gave you a federal judge and ended with a father from the Carmelite fathers.

That alone and the witnesses that came in between show you the desperate nature of hte defense in this case, what they think they have to go to to make their point to try to fulfill Mr. Fahringer's promises to you.

For example, John Manzi was the trainer-driver with whom I discussed his extensive racing family. John Manzi conveniently, it shouldn't be a surprise to you that he had a trophy in his pocket and he doesn't carry it every day. He pulled his trophy out and told us he got it in 1970. You looked at the trophy, as did I and everybody else in this case, and what did it do. It just said "Grossinger golf" on it. Very handsome trophy. Did it have a date on it? It didn't even have a year on it.

John Manzi remembers he got that one in 1970.

Where are the fellows who won the other tournaments? Where are the fellows who won the tournaments Mr. Fahringer claims took place? You better believe that if th[illegible]e had been tournaments, Mr. Fahringer would get even Paul Grossinger to come in and find the winners of those tournaments.

Now, let's look at these character witnesses.

Judge Werker wasn't there when Leon Greenberg

got into this mess with Paul Grossinger. He wasn't there when Leon Greenberg defrauded the track. He was up in Greene County, and indeed, he said he didn't know anything about the facts of this case.

Howard Samuels, he wasn't there either. He was obviously brought here to impress you, too. Mr. Fahringer hinges his argument on Howard Samuels. Is he the savior of the defense case here?

Remember Mr. Samuels' demeanor? I don't mean to cut down a public figure, but you remember this, ladies and gentlemen, when Mr. Samuels was testifying, he was perfectly happy to tell you with a big smile on his face what a great man he was, and what a great reputation Leon Greenberg had.

But when the Court admonished him to answer the questions directly and when I asked him a few simple questions about OTB, the smile changed to a smirk.

You can tell a lot about a witness by his demeanor, ladies and gentlemen. I don't mean that he's lying. I just mean, look at that witness and compare that type of a witness with the witness and thewitnesses that the government brought in here, and our three main witnesses: Paul Grossinger, Bernard Roth and Paula Bergman, all three of them testified with equal deference to both sides. They didn't get answery when someone asked them a question or Judge Pollack gave them a direction; they answered the questions directly and they told you the truth.

Who was the next character witnesses? Sheriff Wasser -- he can't remember whether he paved the streets of emerald green with the taxpayers' money. And Rabbi Kreitman, who officiated at the bar mitzvah, we know there was a bar mitzvah.

And John Duncan, the butcher, he was there, too. But what did you learn from them about the facts of this case? Indeed, John Duncan couldn't recall if there had been a band at the bar mitzvah. So what?

Then there sas Mayor Kaplan. A Democratic woman who has no idea where the funds for her committee come from and the mayor of the Village of Monticello -- I wonder if she knows where the town funds come from.

And finally we had father Isacsson. I don't contend that anybody bought his testimony. That would be absurd for me to stand up here and tell you that. Where did those contributions come from, ladies and gentlemen? They didn't come from Leon Greenberg. They came from the Monticello Raceway to Father Isacsson.

So what does their testimony amount to? It's just part of the smoke screen here. They told you what people say, what people talk, they give you hearsay,

They tell you what somebody's reputation is. But you know from your experience, because you are intelligent and sophisticated people and you have experiences in life -- think how often you have said to yourself or to someone, "Gee, he just doesn't live up to his reputation." How often you might be shocked that someone who seemingly is in a great position in life doesn't live up to that reputation.

Well, let that shock be heard for Leon Greenberg today, ladies and gentlemen, because that is what happened here. None of those character witnesses was there when the track money was stolen, when Leon Greenberg was coveringit up with grandiose statements to the executive committee, not a one of them.

Let's look at some of Mr. Fahringer's documents, sort of a final bit of the defense smoke screen here, the final puff, if you will, what you heard this morning from the minutes.

He said he paid phony bills but, of course, he didn't tell you, rather Mr. Greenberg didn't tell the executive committee that they were phony bills. He said "I've paid the bills." And the minutes say this, remember this, they say, "Mr. Greenberg discussed," not Mr. Greenberg and Mr. Sussman or Mr. Greenberg and

Mr. Kutsher or Mr. Greenberg or anybody else. "Mr. Greenberg discussed the Grossinger bills, and stated he had paid the bill in full;" not "I have the check here, Sidney, why don't you sign it" at the meeting.

No, you didn't hear any evidence like that. It's all in the past tense. And that is exactly what happened here.

We spoke about the intent of Paul Grossinger and Bernard Roth. Mr. Fahringer very cleverly asked him, "Do you think he defrauded the raceway? Did you intend to steal any money," and so on and so forth, but you see what happened here was, these men took certain actions. Paul Grossman in particular, at the time Bernie Roth showed him the bills, he knew the outings hadn't taken place. It was the whole deal. That is why Greenberg had gotten in touch with him in the first place, to arrange the special billing. That is for you to decide, not Mr. Fahringer or me, or even the witnesses. That is for you to decide whether he knew what he was doing at the time those bills were prepared.

Mr. Fahringer also argues to you that somehow the golf slips support his position. You know what he's doing here is like children do in a game called 52 pickup,

it's a card game that you might recall. On 52pickup you take a deck of cards which is perfectly orderly, like these slips are, and the one kid says to the other, "What do you want to play?" and the kid with the cards throws them up in the air and says "52 pickup." You have got cards all over the place and the one kid runs away. That's what we have got with these slips, 27 pickup; you throw them out and see where they come.

But, you know, it's funny because those slips fell some way in order. If you want to look at them, ladies and gentlemen, you go ahead and look and see that those slips are in numerical sequence for those days. If you want to jumble around with the other slips, you see they can go in numerical sequence,too. There are no blanket slips in there, none at all.

Mr. Fahringer talks about 465 missing slips, very clever, with Paula Bergman, and had her testifying about how, well, some of the numbers for July 8 are in the 17,000 series, but some ofthe others for July 22 or whatever are in the 16,000 series. Oh, there must be slips missing. Okay, let me read to you from Paula Bergman's testimony.

Page 286 of the record:

"They run in numerical sequence, according to

the packs I use. There are 200 in a pack."

So that is the end of the mystery about where all these later higher numbers come from. Obviously, you'd be going into the gillions if there is such a number, if you kept running the numbers straight through. So that's no mystery.

How about whether or not Paula Bergman ever prepared a blanket slip. Mr. Fahringer asked her on page 290 of the record:

"I ask you whether you know whether that was ever done or not?

"A Was it done for horsemen's groups or at times?

"Q (By Mr. Fahringer) At times.

"A (From Miss Bergman) Yes, it was when I was instructed to do so, but everyone was told to have slips. If these 27 people went out on the golf course, the starter or the cart man would come in and ask where the slips were, if they were following Mr. Grossinger's orders, he gave strict orders to write slips."

Again page 291 of the record, Mr. Fahringer asked:

"Could they be accounted for in other ways, too, in addition to the individual slips?"

And Miss Bergman answered honestly, "That is possible. Anything could be accounted for in any way Mr. Grossinger wanted it. Or the auditing or the cashier's department wanted it."

And so, there is no mystery nobody's lying to you about how the slips were prepared.

Pete Donnelly and Paula Bergman are in agreement. There were blanket slips sometimes and sometimes they're individual slips. But there aren't any for July and August of 1970.

One last word about the drivers. Mr. Curran turned out to be a great witness for the truth here. This is the golf nut, but what we established through him was very important. I left a question unanswered because I didn't think it had to be asked and I think that this jury recognizes that Mr. Curran says he was on every single outing but that he never stayed for dinner, not once did he stay for dinner in 1970 becuase there was racing every night. And I showed him something to refresh his recollection and he recalled that he had raced on the evening of July 8, 1970, that he had to be in the paddock, you recall, the assembly area, had to be there by 7 o'clock, and he couldn't have staved for dinner.

Rebuttal Summation by Mr. Kingham.

Well, the bill for July 8, 1970, and you look at this in the jury room, that Leon Greenberg instructed Bernard Roth to make up from these supposed lists that tell exactly how many people were there, says that 31 horsemen played golf, had lunch and stayed for dinner.

So that means that James Curran couldn't have been there. But isn't his testimony, "You know, if there was an outing, I was there," and if there was an outing on July 8, 1970, he would have been there, and if this bill is true, it would have said, 31 people played golf and had lunch, and only 30 stayed to dinner.

And so you look at these bills. Mr. Greenberg very cleverly, in designing these bills with Mr. Roth, later on reduced the number of people who played golf and stayed for dinner, but this July 8th one gives the whole thing away for you.

How about Mr. Del Campo, the young fellow who came in here, racing Monticello five years, been a groom before that. As a result of his testimony, of course, we know if there were ever any lists they were utterly useless because he only signed sometimes, and sometimes he didn't sign and so forth.

We also know from him something very important about Leon Greenberg, about this man who supposedly is

so concerned for the welfare of the horsemen. Five years racing at Monticello, not a kid who just came, five years, and, he's never had any contact with the boss.

"Q Did you ever have much contact with Leon Greenberg?

"A Not really. "

And that is what the defense gives you in this case. Don't talk about what they don't give you,let's see what they giveyou. Nothing about the facts. Nothing to controvert that proof.

The defense, in desperation, reaches out for people like Mr. Hoffer, to bring in Paul Grossinger's uncle, to tell you about the tip and so forth.

He doesn't know anything about the $1200 paid out. And Mr. Fahringer says, there is no evidence that Leon Greenberg was in the hotel on November 8. Look at the slip. It says, November 8, 1970. It's even posted. Can you imagine that the cashier is going to post this slip, and there is the same kind of a posting entry here that you see on the ledger cards -- do you imagine that the man or woman at the cashier's desk is going to let out $1200 in cash to anybody and not post it and have the receipt made

at the sare time? Your own experience in hotels tells you that they don't give money away. This says November 8, 1970. You can find from the evidence that there were Greenberg family people in the hotel, from November 6 through November 8, who obviously had come for the bar mitzvah. Why would it be so unusjal for Mr. Greenberg to be there the next day?

And figuring your days again, from all the evidence you have had before you, you know November 8 was a Sunday, banks were closed, if Mr. Greenberg needed money for gratuities or whatever, this was the way to get it, and this slip proves he signed it, not signed by H. Bern. H. Bern is the man who approved the distribution of this money to Leon Greenberg. Bernard Roth testified to that. It's the procedure that is used in the hotel, and there is absolutely nothing to contradict that.

What else does the defense give you in this hodge podge testimony of documents? You talk about impoverished evidence. First thing they do is give you blowups of our proof -- blowups of the government's evidence. Then they give you eight or nine pictures of a room at the raceway. Then they give you cross-examination about the price of cantaloupe in November 1970. Not

cantaloupe in May or June or whatever. Obviously I don't know what the cantaloupe season is. But you don't know what the cost of cantaloupe was. That's for the chef's stewards to determine.

But none of that has anything to do with the facts in this case. But, you know, there is one thing that makes the defendant's argument in this case absolutely ridiculous. I'm going to say this and then I'm going to finish because I think you probably have had enough of it.

Can you imagine that a hotel like the Grossinger's which must be a pretty successful hotel, and I suppose that Paul Grossinger and Bernie Roth must have made some contribution tothe success of that hotel,can you imagine that they're going to give a man $1200 in cash for whatever purpose, even if it's toing to be distributed to the employees -- and I don't suggest that the employees didn't get the tips, probably did -- can you imagine they would give him $1200 in cash and then expect him only to pay back $987.09? That simply doesn't make any sense. And in order to believe Mr. Fahringer's argument, you have to beleive that, you have to believe that Paul Grossinger runs the kind of a business where you give your friends $1200 in greenbacks and only get 900 back.

Could that possibly be the way it was? And could Mr. Greenberg, this successful businessman, this former assistant district attorney, this lawyer in the county, could he possibly believe that Grossinger would run a business like that? If Grossinger helped on the track that way, they would have bounced him off the board.

Certainly he doesn't run the hotel that way and I submit this, that this slip itself, and the fact that Greenberg only gave $987.09 back tells you a lot.

Remember, Grossinger didn't profit from this transaction. In fact, now they're out 4856.16. That money is set aside. And they have been billing Leon Greenberg ever singe they sent the money back to the track and they haven't heard a word from him, not a peep.

But what does the defense give you aside from very well put argument, a well-orchestrated defense, with witnesses -- no one thing which tells us about people too -- the Government's witnesses walk in the door, they come over, sit down, they testify, they get off the stand, and they tell the truth and the Government's case comes in.

The defense witnesses are beautifully escorted in through the door, they are waltzed around here for all to see, they are paraded in front of the jury and then sit down.

Mr.Berkner, one of the young horsemen, it took him about two minutes to walk the whole route. He sauntered before you. Tell me that isn't planned and orchestrated. And that is what you get here.

But they don't know anything about the facts.

Where are the people who would know if the facts are anything different from what the Government proved to you? Where are the voters of confidence that Mr.Fahringer predicted in his opening so strongly that you would see? They are not here, ladies and gentlemen. But what is here is proof positive that Leon Greenberg led those directors to believe they were paying for outings, when they were paying for a party of 312 of Leon Greenberg's family, friends and associates; nobody told them that.

Nobody told them that is what they were paying for, and the truth is now clear; Greenberg, by his actions, betrayed that trust that I talked to you about before. And betrayed the trust that the directors and the executive committee and the shareholders and the betting public put in him as the president of that corporation.

Ladies and gentlemen, that public corporation and those shareholders and the citizens of Sullivan County and, indeed, this country deserve better than that from their corporate leaders.

MR. FAHRINGER: That is objected to your Honor.

THE COURT: Objection overruled.

MR. KINGHAM: And we have proved to you that Leon Greenberg betrayed the trust and that he is guilty and when you think about it, and you look at the facts, after you have heard Judge Pollack's charge, you will find him guilty.

Thank you, your Honor.

CHARGE OF THE COURT

(Pollack, D.J.)

Ladies and gentlemen, we have reached the concluding phase of the trial. The case will shortly be placed in your hands for your verdict.

I want to express to you the Court's appreciation and thanks for your attentiveness and patience during the trial as befits the triers of the facts in a case of importance to the parties.

I shall now give you your final instructions which will guide your deliberations.

Briefly, as you have been told, the defendant on trial has been charged by the Government with criminal offenses.

It is your recollection of the facts that counts here, and not the recollection of counsel and not my recollection.

It is for you to determine the weight that will be given to the evidence, the credibility that you will extend to the witnesses who testified, and the reasonable inferences that are to be drawn from the evidence that has been received.

The indictment charges that the defendant, Leon

Greenberg, a lawyer and president of the Sullivan County Harness Racing Association, operating Monticello Raceway, used or caused to be used money of Monticello Raceway in payment for expenses incurred at the Grossinger's for the bar mitzvah party held there by the defendant for his son; that to accomplish this scheme to defraud, the defendant used or caused the use of the mails for the transmission of letters, bills and checks used to further or attempt to further and cover up the scheme.

You have heard the summations of counsel. If your recollection differs from that of counsel or from my recollection, if I should refer to any evidence, your recollection and the judgment of the facts that you make, control.

You must approach your duty with an attitude of complete fairness and impartiality, one in which you will reach your decision solely on the evidence in the trial and without the slightest trace of sympathy, prejudice or bias either for the defendant or the Government or against either of them.

The fact that the Government is a party here entitles it to no greater or no less consideration than that accorded to any party in a court of the United States. All parties are equals at this bar of justice.

It is my province to instruct you as to legal principles that are to be followed in the case, and it is your duty to accept those instructions as they are given to you by me.

On the other hand, it is your exclusive function to determine the facts on the basis of your consideration of the evidence and then, applying the instructions as to the law that I am about to give to you, to decide whether or not the defendant on trial before you is guilty of the charges against the defendant.

You are the sole and exclusive judges of the facts. Your decision as to the fact is final and conclusive.

During the trial I have been called upon to make rulings on various questions, such as when a question put to a witness was objected to and after an answer was given, a motion was made to strike the answer. I have sustained some objections, I have overruled others. I have struck out answers and exhibits that were offered. It is essential in the performance of your duty that when anything was ordered stricken from the record you put it out of your mind and disregard it.

Similarly, if a question was asked and objection to that question was sustained and no answer was given,

the question itself should play no part in your consideration of the case.

No inferences as to guilt or innocence of the defendant on trial or as to the credibility of any witness should be drawn from any rulings that I have made or from the fact that upon occasion I have asked questions of certain witnesses. My questions were intended only for clarification or to expedite matters. They were not intended to suggest any opinions as to guilt or innocence of the defendant or as to the credibility of anyone who appears before you.

It is neither my intention nor function to favor one side or the other or to imply that I have any views as to the credibility of any of the witnesses or as to the guilt or innocence of the defendant. That is your sole and exclusive function.

Counsel, you must remember, not only have the right but indeed it is their duty to thoroughly investigate their case, interview prospective witnesses, and to press whatever legal objections they believe should be asserted and to seek to bar evidence or proposed evidence on legal grounds where that is appropriate. In doing so, each lawyer is simply performing his sworn duty as a lawyer for a client and on behalf of his client.

As I have indicated earlier, the indictment here is but a formal method of accusing a defendant of a crime and bringing the case into court for trial and determination. It is not any evidence that a crime has been committed and no inference of any kind may be drawn from the indictment.

The grand jury which returned the indictment was not asked to find out if the defendant was guilty. That is solely your function.

The defendant before you has pleaded not guilty. That means that the Government has the burden of proving guilt beyond a reasonable doubt with respect to each crime that the defendant is accused of having committed. And that burden never shifts. A defendant is under no obligation to undertake to prove his innocence. Indeed, a defendant does not have to call any witnesses, he does not have to submit any evidence at all.

On the contrary, under our law, a defendant is presumed to be innocent of any charge laid against him in the indictment. That presumption existed when the indictment was handed down, and the fact that a defendant did not take the stand under the law creates no inferences against him and should not enter into your deliberations.

A defendant's presumption of innocence remains

throughout the trial and in your deliberations. It is a presumption which is sufficient in itself to require an acquittal of a defendant unless you the jury on all the evidence are convinced of his guilt beyond a reasonable doubt.

A reasonable doubt is one that arises out of the evidence in the case or the lack of evidence. It is a doubt which is substantial and not merely shadowy. A reasonable doubt is one that appeals to your reason, to your judgment, to your common sense and to your experience. It is not an excuse to avoid performance of an unpleasant duty. A reasonable doubt is such as would cause prudent people to hesitate before acting in matters of importance to themselves.

Putting that a little differently, if you are confronted, as indeed you are here, with an important decision, and after reviewing all the factors that are pertinent to that decision you find yourself beset by uncertainy and unsure of your judgment, then you have a reasonable doubt.

Conversely, in that same situation, if you have taken into account all the elements that pertain to the problem, andyou find that you have no uncertainty, and no reservations about your judgment, then you have no

reasonable doubt.

Proof beyond a reasonable doubt does not mean proof to a positive certainty or proof beyond all possible doubt. If that were the rule, few persons, however guilty, could ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any fact which by its nature is not susceptible of mathematical certainty. So that kind of certainty, as I have tried to indicate, is not the test. You are going to have to rely upon your own common sense and general experience in evaluating the evidence.

There are, generally speaking, two types of evidence from which a jury may properly find the truth in the facts of the case. One is direct evidence such as the testimony of an eye witness or a participant. The other is indirect or circumstantial evidence, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

In other words, to prove a fact by circumstantial evidence, there must be positive proof of some fact which, though true, does not itself directly establish the fact in dispute, but does afford basis for a reasonable inference of its existence.

The fact or facts upon which it is sought to

base an inference must be shown and not left to rest in conjecture, and, when shown, it must appear that the inference drawn is the only one that can fairly and reasonably be drawn from the facts and that any other explanation is fairly and reasonably excluded.

A common example given to juries of circumstantial evidence is the following: Suppose at the time that you came into court this morning the sun was shining and there were no clouds in the sky, and when you came into this trial courtroom the shades were drawn and the blinds were down, so that you couldn't see outside, and pretty soon someone came through that door, walking into the courtroom with a dripping umbrella and a dripping raincoat. You haven't been outside in the meantime. When you left outside it was clear, but when these people came in with their dripping umbrellas and raincoats, you might infer that something may have happened outside. You would be entitled to infer from the circumstances that there is a dripping umbrella and a raincoat that it is raining outside. Thus circumstantially you infer from a fact, the dripping raincoat and umbrella, some other matter, the rain outside. The mind is led circumstantially from a fact to reach another fact.

That will give you an illustration of what

circumstantial evidence is and what it may lead to.

It is not necessary that the participation or lack of participation of a defendant in any crime be shown by direct evidence. The connection may be inferred from such facts and circumstances as legitimately tend to sustain that inference.

In this case, of course, each side has produced both direct and indirect or circumstantial evidence. The government contends that its evidence establishes the defendant's guilt. The defendant contends that no evidence has overcome the presumption of his innocence and that at the least there is a reasonable doubt of his guilt.

You apply to all the evidence the same standard of proof that will satisfy you of the guilt of the defendant beyond a reasonable doubt, or else you must acquit the defendant.

In evaluating the evidence which has been placed before you, you will determine the reliability of the witnesses you have heard and the extent to which you can count on any or all of them for accurate accounts of the facts.

You have had an opportunity to observe the witnesses as they testified. You want to be asking yourselves and thinking together how each witness impressed

you. Did the witness appear to be truthful, candid, frank, forthright, or did the witness seem evasive or shifty or suspect in any other way?

Did the witness appear to know what he or she was talking about and did he or she impress you as having a purpose to report his or her knowledge to you truthfully and accurately? Was he or she consistent or self-contradictory? How did the manner and matter of his or her testimony compare with the manner and matter of testimony tested on cross-examination?

You should consider not only the intrinsic persuasiveness of each person's testimony by itself, but its setting in the circumstances of the whole case.

For example, the degree to which any particular item of testimony is corroborated or contradicted by other evidence in the case, and all such things you would test by your own mature judgment, about life, about people, about human behavior.

A witness may be discredited or, as we say, impeached by contradictory evidence or by evidence that at other times he or she made statements inconsistent with his or her testimony here on the witness stand.

You should consider, among other things, the question of interest or motive. The witnesses have identi-

fied their backgrounds and associations. You may wish to consider whether the witness may have had inducements or incentives or motives to shade the truth or biases of one kind or another that may have led the witness consciously or not to give you less than a completely accurate account of the facts he or she attempted to portray.

If you believe a witness has wilfully sworn falsely before you, you are free to disregard all of his or her testimony or to accept and credit such parts of it as your judgment dictates should be accepted.

Two Government witnesses, Paul Grossing and Bernard Roth, admittedly participated in acts charged in the indictment as crimes. Thus they are considered accomplices. The Government frequently must use testimony of accomplices because otherwise it would be difficult or impossible to detect or prosecute wrongdoers.

The testimony of an accomplice is not to be rejected unless the jury thinks it has no weight. The testimony of one who provides evidence against a defendant on trial must be received by the jury with caution and weighed with care.

The fact that these witnesses may have motives for testifying falsely does not necessarily show they were testifying falsely. The unsupported testimony of an

accomplice, if credited by the jury, is sufficient on which to convict the defendant on trial when the Government has sustained its burden of proof.

The statements of a witness given under oath before trial in a grand jury hearing are subject to the penalty of perjury, which s' tements are inconsistent with the witness' trial testimo.. are to be considered as evidence of the truth of the matter asserted which the jury may consider with all the other evidence in the case.

The indictment charges the defendant, Leon Greenberg, with participating, along with Paul Grossinger and Bernard Roth, in a conspiracy, or criminal agreement in that they schemed to violate the Federal Mail Fraud Laws.

This is Count 1 of the indictment.

Mr.Greenberg is also charged in Counts 2 through 5 with having actually engaged in a mail fraud, that is, using the mail in order to further or effect his scheme to defraud the Monticello Raceway of approximately $4856.16, which he allegedly used to pay in part for his son's bar mitzvah.

Since the thrust of the charges concerns the execution of the alleged scheme to defraud or attempt to do so, I will first discuss the non-conspiracy counts, which lawyers refer to as substantive counts.

Counts 2 through 5 charge the defendant with violating Section 1341 of Title 18 of the United States Code which provides as follows:

"Whoever, having devised a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises for the purpose of executing such scheme or artifice or attempting so to do, places in any post office

or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the postal service or takes or receives therefrom any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, any such matter or thing..."commits a crime."

In order to convict Leon Greenberg of mail fraud as charged in Counts 2 through 5 of the indictment, you must find each of the following elements beyond a reasonable doubt as to the count you are considering:

First. That the defendant engaged in, participated in, devised or intended to devise a scheme or artifice to defraud or to obtain money by false or fraudulent pretenses, representations or promises as charged in the indictment.

Second. That in order to execute such scheme or attempt so to do the defendant used or caused or aided in theuse of the mails to send something by the postal service as alleged in furtherance of the scheme.

Third. That he did so unlawfully, wilfully and knowingly.

The elements for each of Counts 2 through 5 are the same. Of course, each count alleges a different mailing; that the item referred to was placed in the mails

to be sent or delivered by the postal service and you must reach a verdict as to each count separately.

Mailings charged are as follows:

Count 2, September 30, 1970, Grossinger's bills for $4856.16.

Count 3, October 29, 1970, Raceway check for $4856.16.

Count 4. April 6,1971,letter from Leon Greenberg to Paul Grossinger regarding the bill of $5843.25.

Count 5. July 12, 1971, LeonGreenberg's personal check for $987.09 to the Grossinger's.

The first element of the mail fraud count is the existence of a scheme or artifice to defraud. The language describing this first element is almost self-explanatory.

"A scheme or artifice," is merely a plan for the accomplishment of an object.

"Fraud" is a generic term which embraces all the various means which human ingenuity can devise and which are resorted to by one individual to gain an advantage over another individual or entity by false representations, suggestions or by suppression of the truth.

Thus, a "scheme to defraud" is merely a plan to obtain money or property or something, some advantage

of value, by trick or deceit.

The second element you must find is that the defendant caused or participated in the use of the United States mails in order to carry forward and execute such scheme or attempt so to do.

The Government alleges that the mails were used to send the various bills, checks and letter mentioned in the indictment. The Government need not prove that Leon Greenberg personally mailed the alleged matter. You need only find that the defendant in any way caused the mailing by taking steps which he knew at the time might naturally and probably result in the use of mails, that is, that he did anything to cause or bring about the mailing of the material charged in the indictment including the bills, checks and letter.

That would satisfy the requirement ofuse of the mails.

In addition, I instruct you that the Government need not prove by direct evidence that someone placed the material in a mail box or post office, or that someone received documents or letters in stamped envelopes. Rather, use of the mails may be proved by evidence of business practice, custom or usage between the parties.

Thus, in addition to the other evidence, the

Government claims that the normal course of business and the habit of the parties in this case was to use the mails to communicate on the matters involved between the Grossinger and Monticello Raceway.

Such evidence, if uncontradicted and if credited by you, would be sufficient for a finding that the mails were used beyond a reasonable doubt. Of course, the weight and consideration to be given to such evidence is for your determination alone.

As to the third element of the crime of mail fraud, the terms "wilfully and knowingly" mean that you must be satisfied beyond a reasonable doubt that the defendant knew what he was doing and that he did it deliberately and voluntarily as opposed to mistakingly or accidentally or as a result of some coercion.

As used here, "wilfully" means with a bad purpose and specific intent to do what the law forbids.

Of course, it is not necessary that the defendant knew he was violating any particular law. Rather, it is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his action and specificially intended to do what the law forbids. The significant fact to be established under this element is the specific criminal intent and the bad

purpose with which the defendant acted.

Under the Mail Fraud Statute, false representations, promises or pretenses do not amount to a fraud unless they are made with fraudulent intent. However misleading or deceptive a plan may be, the use of the mails to execute it or attempt to do so does not constitute a crime if the plan was devised in good faith and not with a specific intent to deceive or defraud.

Honesty and good faith on the part of the defendant is always a good defense to the charges in these counts. An honest belief in the truth of representations made by him is a good defense however inaccurate the statements may turn out to be.

Here the statements in question are the bills prepared in September for purported horsemen's golf outings on five specific Wednesdays in July and August 1970 said to have taken place.

The question of defendant's knowledge and his intent and his wilfulness is a question of fact which you must decide in this case, but, unlike most other questions of fact, it involves what is in a person's mind or the purpose which motivates him in a given course of conduct.

Obviously we have not yet devised, and perhaps it is well if we never do, an instrument to record what

goes on in a person's mind. Rarely is direct proof available that a man has knowledge of a particular fact or has a particular purpose in mind when he acts. On occasion he may write a letter or acknowledge orally that he had an evil or forbidden purpose, but that is rare.

Plainly, it is the exception rather than the rule.

Direct proof of a specific wilful and wrongful intent is not necessary. Usually, if it can be established, that is shown by circumstantial evidence and determined from the acts and conduct and all the circumstances in evidence and the natural inferences that you may draw therefrom.

We turn now to the conspiracy charge in Count 1. The defendant is charged in Count 1 with violating Section 371 of Title 18 of the United States Code which provides in part as follows:

"If two or more persons conspire to commit any offense against the United States and one or more of such persons do any act to effect the object of the conspiracy," those persons have committed a crime.

In this case the indictment reads as follows:

"1. The defendant LEON GREENBERG was, at all times relevant to this indictment, president and

a member of the board of directors of the Sullivan County Harness Racing Association, Inc., (Raceway), and General Manager of the Monticello Raceway, which was operated by said corporation in Monticello, New York.

"2. Co-conspirator Paul Grossinger was, at all times relevant to this indictment, president of S & H Grossinger,Inc., which operated The Grossinger, a hotel in Grossinger, New York. At all times relevant to this indictment until April ly, 1974, co-conspirator Paul Grossinger was also a member of the board of directors of the Raceway.

"3. Co-conspirator Bernard Roth was, at all times relevant to this indictment, employed by The Grossinger as comptroller.

"4. On or about November 7, 1970, a bar mitzvah and reception were held at The Grossinger for Leon Greenberg's son, at a cost to TheGrossinger of approximately $5843.25.

"5. From on or about August 1970, up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, Leon Greenberg, the defendant, and Paul Grossinger and Bernard Roth, named herein as co-conspirators and not as defendants, and others to the Grand Jury known and unknown, combined, conspired, confederated and agreed together and with each other to

defraud the Raceway and to violate Section 1341 of Title 18, United States Code."

I skip to Paragraph 8.

"8. It was further a part of said conspiracy that the defendant Leon Greenberg and his co-conspirators would and did devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises and that for the purpose of executing said scheme and artifice to defraud and attempting so to do they would use and cause to be used the United States mails."

Now going back to paragraph 6:

Among the means whereby the defendant Leon Greenberg and his co-conspirators would and did accomplish the object set forth in paragraph 5 of this indictment were the following:

"(a) On or about September 30, 1970 at the direction of the defendant Leon Greenberg and his co-conspirator Paul Grossinger, co-conspirator Bernard Roth prepared and mailed fictitious bills in the total amount of $4856.16 to the raceway for horsemen's outings at the Grossinger in July and August 1970, which outings, as the defendant and his co-conspirators then and there well knew, had not taken place.

"(b) On or about October 29, 1970, the defendant Leon Greenberg signed and caused to be mailed to the Grossinger a check drawn on a bank account of the Sullivan County Harness Racing Association, Inc. in the amount of $4856.16, in payment for the above-mentioned horsemen's outings which he then and there well knew had not taken place.

"(c) On or about April 6, 1971, the defendant Leon Greenberg and his co-conspirator Paul Grossinger instructed co-conspirator Bernard Roth to reduce by $4856.16 the amount which the defendant

personally owed the Grossinger for the cost of his son's bar mitzvah and reception, and to credit to the defendant Leon Greenberg's personal bill the amount of $4856.16 which had been paid by the raceway to the Grossinger for the fictitious horsemen's outings.

"(d) On or about April 8, 1971, co-conspirator Bernard Roth caused to be mailed to the defendant Leon Greenberg a statement fromthe Grossinger for the balance due for the bar mitzvah and reception in the amount of $987.09, which statement reflected a reduction of the $5843.25 cost of the bar mitzvah and reception by the amount of $4856.16, which had been paid by the raceway to the Grossinger for the fictitious horsemen's outings.

'(e) On or about July 13, 1971, the defendant Leon Greenberg signed and caused to be mailed to the Grossinger a check drawn on his personal bank account in the amount of $987.09."

In order to convict Leon Greenberg under count 1, you must find that each of the following three elements have been proved beyond a reasonable doubt:

First: That the conspiracy charged in count 1 did in fact exist, that is, that Leon Greenberg and at least one of the other persons came to an understanding

to violate the law I have mentioned in order to execute a scheme to defraud or attempt to do so at or about the time charged in the indictment which is sometime between August 1970 and the filing of this indictment in 1975.

Second: That Leon Greenberg knowingly and wilfully and unlawfully associated himself with the conspiracy.

Third: That at least one of the co-conspirators committed at least one of the overt acts set forth in the indictment and I will come to those in a moment.

What is a conspiracy? A conspiracy is a combination, or agreement, or understanding of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means.

The gist of the crime of conspiracy is the unlawful combination or agreement or understanding to violate the law. Whether or not the persons charged in the indictment accomplished what it is alleged they conspired to do is immaterial to the question of guilt or innocence on a conspiracy charge.

A conspiracy has sometimes been called a

partnership in criminal purposes in which each member becomes the agent of every other member.

However, to establish a conspiracy, the government is not required to show that two or more persons sat around a table and entered into a solemn compact, orally or in writing, stating that they have formed a conspiracy to violate the law, setting forth details of the scheme or plans, the means by which the unlawful project is to be carried out, or the part to be played by each conspirator. Indeed, it would be extraordinary if there were such a formal document, or specific oral agreement.

Your common sense will tell you that when men in fact undertake to enter into criminal conspiracy, much is left to unexpressed understanding.

Conspirators do not usually reduce their agreements to writing or acknowledge them before a notary public, nor do they publicly broadcast their plans. From its very nature a conspiracy is almost always characterized by secrecy, rendering detection difficult.

It is not required that you find that each and every one of the alleged co-conspirators joined in the conspiracy. Thus,it is sufficient if two or more

persons, in any manner, through any contrivance, impliedly or tacitly, come to a common understanding to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy.

In determining whether there has been an unlawful agreement, you may judge acts and conduct of the alleged members of the conspiracy which are done to carry out an apparent criminal purpose.

The old adage, "Actions speak louder than words" is applicable here.

Usually, the only evidence available is that of disconnected acts on the part of the alleged individual conspirators, which acts, however, when taken together in connection with each other and with the reasonable inferences flowing from such acts, show a conspiracy or agreement to secure a particular result as satisfactorily and conclusively as more direct proof.

If, upon such consideration of all the evidence, direct and circumstantial, you find beyond a reasonable doubt that the minds of at least two of the alleged conspirators met in an understanding way that they agreed, as I have explained a conspiratorial agree-

ment to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy is established.

Count 1 charges that the unlawful object or goal that the conspiracy was designed to achieve was to defraud Monticello Raceway and to violate section 1341 of title 18 of the United States Code, which makes it a crime for anyone in order to execute a scheme to defraud or to attempt to do so to use the mails to send something thereby to help carry out such a scheme to defraud.

The indictment charges that Leon Greenberg and his co-conspirators used certain means to achieve their objective. Those alleged means generally parallel the overt acts which I will discuss in a moment. If you find a conspiracy existed, it is not required that the government prove that all the means alleged in the indictment to further it in fact were brought into play. If you find that one or more of the means were used to achieve the objective, that would be sufficient.

Once satisfied that the conspiracy charged existed, you must ask yourself who its members were. In deciding whether Leon Greenberg was a member of

the conspiracy, you should consider whether on all the evidence he knowingly entered the conspiracy.

In determining whether the defendant became a member of the conspiracy, you must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose.

Did he join with awareness of at least one of the illegal aims and purposes of the conspiracy?

When I say "join" the conspiracy I don't mean that the defendant had to file an application for membership. Before one can be found to be a co-conspirator, however, he must knowingly join in the venture. He must promote it or have a stake in its outcome. In the vernacular, he must be in on the scheme, in on the plan.

Knowledge is a matter of inference from facts proved. It is not necessary that a defendant be fully informed as to all the details of the scope of the conspiracy. In order to justify any inference of knowledge a defendant need not know the full extent of the conspiracy and all of its activities and actors.

I have referred to the words "knowingly, wilfully and unlawfully." In other words, the

government must establish beyond a reasonable doubt that the defendant Greenberg, aware of its purposes and objects, entered into a conspiracy with the specific criminal intent, that is, that the defendant knowingly conspired to do what the law forbids purposely and specifically intending to violate the law; that there was an informed participation by him in an understanding or agreement or a scheme which intended the commission of acts in violation of the law, as I have elsewhere defined the applicable statute, to further the illegal activity.

I want to caution you that mere association with one or more of the co-conspirators does not make one a member of the conspiracy. Nor is knowledge without participation sufficient. What is necessary is that the defendant participate with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

Once you have found the conspiracy to exist and the defendant to have knowingly participated in it, the extent of his participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or duration of his participation. Even if he participated in it to a degree more limited than

that of other co-conspirators, he is equally guilty so long as he was in fact a conspirator .

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying outthe conspiracy. Therefore, the acts or declarations of a conspirator in the course of the conspiracy and in furtherance of the common purpose are considered to be the acts of all conspirators and all are responsible for such acts and declarations.

In this connection you may find that Paul Grossinger and Bernard Roth are co-conspirators in count 1. If you do, this means that you may consider such of their statemens and acts as were in the course and in furtherance of the conspiracy, as to which you heard testimony, as evidence against Leon Greenberg if you find him to have been a member of the conspiracy.

Accordingly, if you find, in accordance with these instructions, that some or all of the alleged co-conspirators were participants in a conspiracy, then acts done and statements and declarations made in the course and in furtherance of the conspiracy by the persons found by you to have been members of the conspiracy may be considered against Leon Greenberg if you find that he was a member, even though such acts

or declarations were made in his absence or without his knowledge.

As I have already mentioned, an essential element of the crime of conspiracy is that at least one over act, to carry out the object of the conspiracy, be committed by at least one of the co-conspirators. An overt act is any step, action or conduct which is taken to achieve or further the objective of the conspiracy.

The overt acts charged in this indictment read as follows:

"In furtherance of, and to effect the objects of said conspiracy, the defendant Leon Greenberg and his co-conspirators committed the following overt acts, amont others, in the Southern District of New York and elsewhere:

"(a) In or about September 1970, the defendant Leon Greenberg and his co-conspirator Paul Grossinger instructed co-conspirator Bernard Roth to prepare and mail false bills in the amount of $4956.16 from the Grossinger to the raceway.

"(b) On or about October 29, 1970, the defendant Leon Greenberg signed and caused to be mailed to the Grossinger a check drawn on a bank account of the

Sullivan County Harness Racing Association, Inc. in the amount of $4856.16.

(Continued on next page)

"(c) On or about April 6, 1971, the defendant Leon Greenberg caused a letter to be mailed to Paul Grossinger requesting verification of the amount of the bill sent to the defendant by the Grossinger for hte defendant's son's bar mitzvah.

"(d) On or about April 6, 1971, the defendant Leon Greenberg and his co-conspirator Paul Grossinger instructed co-conspirator Bernard Roth to reduce by $4856.16 the amount which the defendant personally owed to the Grossinger for the cost of his son's bar mitzvah.

"(e) On or about July 12, 1971, the defendant Leon Greenberg signed and caused to be mailed to the Grossinger a check in the amount of $987.09 drawn on his personal bank account.

"(f) On or about April 17, 1974 co-conspirator Paul Grossinger caused a letter and certified check in the amount of $4856.16 to be mailed from the Grossinger to the Raceway."

Now, obviously for people to have conversations or prepare and mail, documents, checks or letters is not in and of itself criminal conduct, but when, as the government charges, and if you so find, the purpose of the activity was to accomplish a fraud in furtherance of

which the mails were used, then those activities lose their innocent character, and become overt acts to further the purpose of an illegal entreprise.

It is not necessary for the government to prov that each member of the conspiracy committeed or participated in the particular overt act, since the act of anyone done in furtherance of the conspiracy becomes the act of all the other members.

Also the government is not required to prove each of the overt acts. It is sufficient if it pr ves the commission of at least one of the acts at or about the time alleged.

In addition, the government must show that at least one overt act was committed in the Southern District of New York. I instruct you that Sullivan County is within the Southern District of New York.

There has been testimony here of the defendant's reputation in his community for truth and honesty. You should consider such evidence together with all the other evidence in the case in determining the guilt or innocence of the defendant.

Reputation evidence, if you believe it, may in itself create a reasonable doubt where without such evidence no reasonable doubt would have existed. But if

upon all of the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty, a showing that he previously enjoyed a reputation of good character does not justify or excuse the offense and you should not acquit a defendant merely because you believe he is a person of good repute in the community in which he moves.

The testimony of a character witness is not to be regarded by you as expressing the witness' personal opinion of the defendant's character. It's a report of a reputation in the community. Testimony of character reputation is not to be taken by you as the witness' opinion as to the guilt or innocence of the defendant. The guilt or innocence of the defendant is for you and for you alone to determine.

Now, although there has been a fair amount of testimony, the issues that you are called upon to decide seem to be relatively simple. I think it's desirable, so as to bring the evidence within the framework of the charges in the indictment, to indicate in broad outline the contentions on the evidence you have received.

However, I caution you that in my doing so it is nonetheless your recollection of all the evidence that controls and not my statement or the way I marshal

the references. Unless you agree, no inference is to be drawn for or against the defendant from the manner or substance or any incompleteness of my review or of my recollection, none of which controls your determination as I have said to you before.

The government presented evidence that Paul Grossinger approached Greenberg and offered to him the facilities of the Grossinger for his son's bar mitzvah party.

The government contends that Greenberg called Grossinger in the summer of 1970 and told him that Mrs. Greenberg desired the bar mitzvah to be held at the Grossinger; that in September 1970 Greenberg called Grossinger and told him that he wanted the bar mitzvah billed in a certain manner andthat he had approval of this; he had the approval of the track picking up that much of the cost of the bar mitzvah.

Grossinger told Greenberg, "Let me turn you over to Mr. Roth, my comptroller, and he will work it out with you." And Grossinger then instructed Roth so to do.

The government further contends that the evidence shows that Greenberg thereafter gave Roth the dates and numbers of people from the raceway whom he said had attended Grossinger golf outings as follows:

31 horsemen on July 8; 46 on July 22; 27 on August 5; 21 on August 12; and 43 on August 26, 1970; that the total costs for this number of golf privileges and lunches reached by Roth initially was $2700 to $2800.

The government further contends that the evidence shows that Greenberg said there was more money due, in the neighborhood of $5000 total; that there should be added the cocktail parties and dinners for the horsemen; that after Roth recomputed, this brought the total up to $6200; that Roth showed the recomputed bills to Paul Grossinger who directed the usual 25 per cent courtesy discount and told Roth to send bills to the Raceway which he did in September 1970; that the bills amounting to $4856.16 were paid by the Raceway by its check dated October 29, 1970, signed by Mr. Greenberg and Mr. Sussman, the chairman of the board of the Raceway.

The government contends further that evidence shows that the bar mitzvah was held on November 7, 1970, at a cost to the Grossinger later computed of about $5843.25 and of the value of $12,000 to $15,000; that Greenberg paid separately for flowers, music and some gratuities.

The government contends further that the

evidence indicates that thereafter Greenberg was billed $5843.25 by the hotel for the costs to the Grossinger of the bar mitzvah and payment was requested, but after a letter between Greenberg and Paul Grossinger about this bill, in April 1971, the amount of the check of October 29, 1970 on Grossinger's instructions to Roth was deducted from the $5843.25, leaving an amount of $987.09 on the account for which Greenberg sent his check to the Grossinger dated July 12, 1971.

On April 17, 1974, Grossinger on advice of its lawyer sent to the raceway by registered mail a certified check for $4856.15, which was the amount it had received in 1970 from the raceway's funds, together with Paul Grossinger's resignation from the board and officers in the raceway and bill to Leon Greenberg personally for $4856.16 on account of the bar mitzvah. A copy of the Grossinger letter was sent to each director and officer of the raceway and to Leon Greenberg, the defendant: the Grossinger letter and check to the raceway came to Mr. Schoonmaker, the comptroller,who gave them to Mr. Greenberg and a few days later Mr. Greenberg gave the check back to Mr. Schoonmaker and told him to keep it -- he put it in the safe and kept it till he brought it down to Mr. Kingham in May 1975.

Grossinger testified that at no time did he agree to pay for food and all else was to be paid by Greenberg. The defendant, by his attorney, contended that there was such an arrangement and that it is to be inferred from the facts and circumstances in evidence.

The government contends that the transactions described were made to defraud or cover up fraud on the raceway.

The defendant denies that there was any fraud or coverup, and defendant denies conspiracy and denies that the bar mitzvah had anything to do with the payment of these raceway monies to the Grossinger and contends that the money paid by the track in 1970 was due the Grossinger for five horsemen's outings mentioned previously.

Defendant contends that in connection with issuing the check of the raceway for the $4856.16 he had reported to the executive committee of the raceway on November 2, 1970, the receipted bills from the Grossinger, the 25 per cent deduction allowed and the payment of the bills and that this is mentioned in the committee's minutes.

In summary, the defendant questions the credibility and motivations of the government's

witnesses, and denies any connection with or complicity in any attempt to defraud Monticello Raceway in any transactions or schemes in connection with the use of its funds.

The defendant relies on the presumption of his innocence and claims that in all events guilt has not been established beyond a reasonable doubt as to him.

The Court expresses no opinion as to the validity of any contention made by the Government or by the defendant. It is your recollection of all the evidence that controls. You must not infer from the summary that the Court accepts or rejects certain parts of the record. That is no part of the Court's function. Consideration of all the evidence and circumstances or of the absence of evidence is the jury's function and solely the jury's function

As I have said and I will repeat, my recollection is not necessarily accurate or complete. It is yours which is controlling. And moreover, you are not to be influenced by the matters I have given you or failed to mention or the manner in which I have done so. My statement is not binding on you in any respect except to the extent that you choose to utilize it and confirm it from your own recollection.

Ladies and gentlemen, use your common sense in evaluating the evidence and circumstances and the probabilities. Do not allow yourselves to be swayed or carried away or diverted from a fair and impartial attention to duty by appeals to passion, sympathy or bias.

You are not to pay homage to anyone's ingenuity, yours or counsel's, unless there is evidence or lack of evidence on which to rest your deliberations.

This is not a popularity contest. This is a case to be controlled by evidence or the lack of it.

Under your oath as jurors, you cannot allow any consideration of the punishment which might be inflicted upon the defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations. The duty of imposing sentence rests exclusively upon this Court. If you were to give that matter any attention, you would be interfering with my function. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law. You are to decide the case upon the evidence and the evidence alone.

I want you to listen to each other carefully in the jury room when you consider this matter. If you think you are wrong and somebody else is right, don't be embarrassed about changing your opinion, but remember, each of you has to decide this case for yourself.

Each count must be considered by you separately. A verdict of guilty or not guilty as to any count to be acceptable must be unanimous.

The oath you took right at the outset really sums up whatyou are supposed to do, and that is, without fear or favor to any party, you will well and truly decide the

issues according to the evidence and the law as stated to you in this charge.

If you desire any of the exhibits, those will be sent to you in the jury room upon request.

My attention was called to the possibility that some juror or jurors may have taken notes during some or other parts of the trial. Such notes are, of course, not evidence, and may not be relied on by any juror since, as frequently happens, unless a verbatim record is taken, as does the court reporter, there may be something omitted or added in the press of the moment which could inadvertently give a misimpression.

The sole official evidence to rely on is the verbatim evidence that the official court reporter has taken on his stenotype machine, and your recollection of all the evidence.

If you want any of the testimony read, that can be done. If you want a copy of the indictment, that can be supplied on request. Please do not communicate with anyone concerningyour deliberation about this case, not even me, except in writing,signed by your forelady, Mrs. Heitner, who sits in the first seat here; and she will be provided with a pencil and paper.

I would now like to take a moment to talk to the

lawyers at the side bar, who may wish to call to my attention any matter that I may have overlooked, or where I may have misspoken, and I will therefore ask you to relax for a moment while I do that.

(At the side bar.)

THE COURT: Are there any exceptions or requests on the part of the Government?

MR. KINGHAM: None for the Government, your Honor.

THE COURT: Are there any exceptions on the part of the defendant?

MR. FAHRINGER: May it please your Honor, I would except to that portion of your charge where you state a reasonable doubt is a substantial doubt.

THE COURT: What?

MR. FAHRINGER: I would except to that part of your charge where you say a reasonable doubt is a substantial doubt.

THE COURT: Yes.

MR. FAHRINGER: I would, your Honor, most respectfully except to your instructions on accomplice testimony on the grounds that I don't believe in this trial anyone has been established as an accomplice. Both Mr.Grossinger and Mr. Roth denied, as I recall their

testimony, any wrongdoing on the witness stand during the course of the time of the indictment and the period of the conspiracy.

THE COURT: I thought that I was doing you a favor by giving you an accomplice charge, and they clearly are charged here as accomplices because the indictment charges them as co-conspirators, and I put them in their proper frame as not just ordinary witnesses, and made the rule as to them and their testimony of careful scrutiny and the other phrase of caution that goes at that point.

All right.

MR.FAHRINGER: I would except,your Honor, to the charge of aiding and abetting on the substantive counts because of the inclusion of a conspiracy count in the indictment. As I understand that is inappropriate,your Honor. I may be wrong on this, but my impression is that it is inappropriate, the aiding and abetting on the substantive counts, if the conspiracy count covers the substantive counts.

THE COURT: I don't recall charging aiding and abetting.

MR. KINGHAM: I don't recall you did either, even though it is alleged in the indictment.

MR. FAHRINGER: I heard you mention it, your

Honor.

THE COURT: It is not in my charge, to the best of my knowledge, nor do I accept your version of the law, even if it were in my charge, but I don't think I put it into this charge.

MR. FAHRINGER: Your Honor, I most respectfully except to the reading to the jury, this phrase "unindicted co-conspirators." I question the grand jury's authority to label people as unindicted co-conspirators. I know that is traditionally done in this District,but I think it is prejudicial of a defendant because they are labeled as co-conspirators, and in this instance both of these men, I think, from their testimony, denied any conpsiracy, so that you have the accusation conveyed to the jury without any proof of a conspiracy.

THE COURT: You have made a similar point in Bowdlerized form previously but I don't think that the point is good, and furthermore, the Second Circuit has uniformly, at least during my eight year tenure, approved the indictment in that form.

MR. FAHRINGER: Your Honor, did you charge the jury that the indictment is a mere accusation and no evidence of guilt? I don't recall you --

THE COURT: Oh,yes. Very clearly. I think

I referred to that not o.../ in the charge,but I referred to it before we swore a single juror.

MR. FAHRINGER: I remember you doing it then, your Honor.

That is all I have.

THE COURT: Do you have anything further?

MR. KINGHAM: I have not.

THE COURT: You have nothing further?

MR.FAHRINGER: No,your Honor, and your Honor, I will mark my requests afterwards.

THE COURT: They have been marked Court Exhibit 2.

MR. FAHRINGER: Thank you.

(In open court.)

(Marshal sworn.)

THE COURT: Miss Haney and Mrs. Schlanger, we have come to the conclusion of your service in this case. Would you both be good enough to report to Room 109 and the clerk will give you such instructions as are appropriate. You may go now. If there is anything that you have left in the jury room,you may go get it immediately.

(Two alternate jurors excused.)

THE COURT: Ladies and gentlemen, that completes the proceeding and the first order of business will be that

the marshal will take you all to lunch,and upon your return from lunchyou will commence your deliberations.

In the meantime, we will sort out the exhibits and anything else so as to be ready for any requests that you make.

Please be specific in any request that you make because it is not easy, even though it has been a short trial, to reach for everything that goes through a person's mind, and to the degree that you can be specific, we can facilitate your requests more speedily.

All right, Mrs. Heitner,you may take the jurors out.

(Jury retired at 1:25 P.M.)

THE COURT: I think that we can reasonably stand in recess until approximately three o'clock.

(Recess.)

(3:00 P.M.)

THE COURT: Mr.Fahringer, I have a note from the jury which says they want a copy of the indictment, the $1200 voucher, the original ledger sheet, a copy of Paul Grossinger's testimony, and the certified check from the Grossinger's.

Now, I guess we can comply with the exhibit request and send back a note about the Grossinger testimony,

that that can only be done by rereading the parts that they want to hear about, unless -- well, I guess there is no "unless" -- because there are parts of it that have information that involve objections and strikeouts, and unless you and Mr. Kingham want it to go in, in that typewritten form, I usually don't do that, but I will be guided by any stipulation you want to make.

Will you get a hold of Mr. Kingham.

MR. FAHRINGER: Yes, I will, your Honor.

(Pause.)

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: The note from the jury is marked Court Exhibit 3, and I have endorsed thereon: "Jurors: Testimony when requested must be read in open court and cannot be submitted by copy. Judge Pollack."

"The other items are handed you herewith."

(Court Exhibit 3 marked.)

(Recess.)

(3:35 P.M.)

THE COURT: The jury in the case that was on trial have requested the following items. Would you please provide them for me.

1. Itemized bill for bar mitzvah.

2. Bill for $987.09.

3. Mr.Greenberg's letter to Paul Grossinger about verification of bill.

(Court Exhibit 4 marked.)

(Pause.)

THE COURT: In response to the jury's request as set forth in Court Exhibit 4, I am sending in to the jury the following exhibits: Items 15A and B, which request the letter to Paul Grossinger about verification of the bill; Exhibit 12, which is the cost breakdown for the bar mitzvah, which I believe the jury requested in the form of itemized bill for the bar mitzvah; and Exhibits 16, 17, 18 and 19, which all are the same thing, namely, the invoice for $997.09, which the testimony indicates were sent out on April 8, May 4, June 7 and July 7, 1971.

I understand thatyou have some thought on this, Mr.Fahringer.

MR. FAHRINGER: Yes, your Honor, I would only object to two of the items. One I object to the sending in of the enclosure with the letter of verification, and I object to sending in the torn copies of the bills of that $987.09, which I think are three in number.

THE COURT: All right. Send them in.

(Recess.)

Requests by the Jury.

(At 4:35 P.M. a note was received from the jury.)

(In open court without the presence of the jury.)

THE COURT: I have here a note which says:

"We would like to listen to Roth's testimony relating to the conversation between Paul Grossinger and Bernard Roth before the $5843.25 bill was sent out."

Below that it says "Grossinger's testimony."

Let's see if we can identify the first batch.

The second seems relatively easy.

That will be marked Court Exhibit 5.

(Court Exhibit 5 marked.)

MR. KINGHAM: Your Honor, I believe the Roth direct might start on the bottom of page 79, the very last line.

THE COURT: How about page 75, line 13, omitting the colloquy, of course.

MR. KINGHAM: I think that is correct, your Honor. Intervening there is the cautionary instruction you gave the jury.

THE COURT: That part, of course, would not be read at this time, just the questions and answers.

It picks up at page 77, line 15.

How far does it run?

MR. FAHRINGER: Page 80, your Honor.

THE COURT: I would think it runs to 83, line 3.

MR. KINGHAM: 82, line 24, your Honor, I think.

THE COURT: Yes, 82, line 24.

Is there any cross-examination that relates to this subject?

MR. FAHRINGER: I don't believe there is, your Honor.

MR. KINGHAM: I don't believe there is either, your Honor.

THE COURT: All right.

MR. KINGHAM: Does the note also request the Grossinger testimony?

THE COURT: That is unspecific and therefore we will have to find out when they come in what they are talking about.

Let's identify the same subject as against the possibility tha that is all they are talking about.

MR. KINGHAM: The entire testimony runs from 180 through 209.

THE COURT: I am thinking about this -- I would think that it starts at 185, line 24.

MR. KINGHAM: Through perhaps, your Honor, 186, line 24.

THE COURT: 186, line 24, and then picks up again at 187, line 20.

MR. KINGHAM: I believe, your Honor, that relates to the letter.

On cross-examination.

I don't believe there is any cross on that.

THE COURT: There doesn't seem to be any cross on that. Is that right, Mr. Fahringer?

MR. FAHRINGER: I am just looking, your Honor.

Page 199, your Honor.

THE COURT: That is the pre bar mitzvah conversation. That hasn't to do with the later billing. I don't find anything on cross-examination on that.

MR. KINGHAM: Nor do I, your H-nor.

MR. FAHRINGER: Your Honor, may I inquire? Are you going to ask of the jurors do they want specific parts of Grossinger's testimony read because the note as I understand it just says Grossinger's testimony.

THE COURT: I read it as referring to or relating to the conversation between Paul Grossinger and Bernard Roth before the $5843.25 bill was sent out.

MR. FAHRINGER: I am sorry, I thought the note

read --

THE COURT: Look at the note. I read the note in context. We will read it that way and if they want any further testimony from the Grossinger evidence, we will have that read, too.

MR. FAHRINGER: May I read this into the record, your Honor?

THE COURT: It will be placed on the record as the Court exhibits.

MR. FAHRINGER: I take exception.

THE COURT: You can't take exception because I am going to have him read that subject and then inquire whether there is anything else they want read. If they want anything read that will be up to them and not up to you to specify.

MR. FAHRINGER: The note says Grossinger testimony, your Honor.

THE COURT: I read that note to refer to the subject between Roth and Grossinger on that matter and I will ask them if they want any more.

(Jury present.)

THE COURT: Mrs. Heitner and jurors: I have your note here for the testimony of Roth relating to the conversation between PaulGrossinger and Bernard Roth before

the $5843.25 bill was sent out and then the words "Grossinger's testimony" and I assume you want Grossinger's testimony on the same subject so I will have the Roth and the Grossinger testimony on that subject read and if there is any further testimony on any other subject that you want of Grossinger's, you will indicate that to me after this has been read to you.

(Testimony read.)

THE COURT: Mrs. Heitner, is that the information that the jury wants or do you want further reading from the Grossinger testimony?

THE FORELADY: I think that is what they wanted. They would like to hear the conversation between Mr.Greenberg and Mr. Roth -- Mr.Grossinger and Mr. Roth regarding the $948.

THE COURT: Will counsel come up to the side bar a minute.

(At the side bar.)

THE FORELADY: Your Honor, they have decided that they would like to listen to the complete testimony of Grossinger.

THE COURT: All right. Do you want that now or do you want the Roth testimony and the Grossinger testimony on the subject? Whidh do you want? Do you want it

straight through?

All right. That makes it simpler. Thank you.

(Paul Grossinger testimony read in toto.)

THE COURT: Is there anything else the jury wants to hear at this time?

THE FORELADY: I don't think so.

THE COURT: Wait just one moment while I talk to the lawyers, please.

(At the side bar; off the record.)

(In open court.)

THE COURT: This is reading that the reporter inadvertently went past a particular portion where there was talk by the lawyers and the Judge, and so on, so we will reread those few lines so that you will have the whole thing.

(Record read.)

THE COURT: You may go out.

(The jury retired to deliberate again at 5:30 P.M.)

Requests by the Jury.

(At 6:10 p.m. a note was received from the jury)

(In open court without the presence of the jury)

THE COURT: This reads:

"Bills made up by Roth for the golf outings."

Then it says "The green golf tickets."

MR. KINGHAM: Your Honor, that would be Government Exhibits 2A through 2G, inclusive, and the box, which is Government's Exhibit 30 in evidence, including the golf tickets.

THE COURT: All right, give them to the clerk.

MR. KINGHAM: Is that right?

MR. FAHRINGER: Yes.

(Court Exhibit 6 marked)

(Recess)

MR. KINGHAM: The following is the 3500 material index. These items were handed over to counsel for the defendant, Mr. Fahringer, either on the day before trial or with respect to grand jury exhibits 3501, 2 and 3 were handed over the Friday before the trial began.

Requests by the Jury.

The list is as follows:

3501, Roth grand jury testimony 4/22/75.

3502, Roth grand jury 5/23/75.

3503, Grossinger grand jury, 5/23/75.

3504, Roth immunity grant, 7/22/74.

3505, Kingham notes re Roth phone call, 5/21/75.

3506, J. Kase memo re Roth interview 7/3/74.

3507, N. Case memo re proposed Roth affidavit 7/10/74.

3508, Phelan memo re Roth interview, 8/15/74.

3509, N. Case memo re Roth interview 8/20/74.

3510, Phelan memo re Roth interview 8/20/74.

3511, Phelan memo re Roth interview 8/28/74.

3512, McCullough grand jury, 5/27/75.

3515, McCullough letter re minutes, 6/18/75.

3514, Schoonmaker grand jury, 5/13/75 a.m.

3515, Schoonmaker grand jury 5/13/75, p.m.

3516, Schoonmaker grand jury 10/16/75 a.m.

With the exception of pages 32 through 42 furnished in camera.

3517, Schoonmaker grand jury, 10/16/75 p.m.

3518, Donohue memo, 7/10/74 re Schoonmaker

interview.

3519, Grossinger immunity grant 7/22/74.

3520, Kase memo re Grossinger interview 6/7/74.

3521, Kingham memo re Grossinger interview 5/27/75.

3522, Bergman notes, 10/31/75.

The record should reflect that this list was read into the record in the presence of Mr. Fahringer and thathe has assured me that all these materials will be returned at the conclusion of the trial.

(At 7:55 p.m. a note was received from the jury)

(In open court without the presence of the jury)

THE COURT: "Horsemen's outing for June and blanket sheet for 1973."

I suppose what they want is the June papers, what exhibit is that?

MR. BLOCK: 31, your Honor.

MR. KINGHAM: That is 31 for the June papers. The blanket sheet for '73 is Defendant's Exhibit V.

THE COURT: All right, give them to the marshal,

Discussion.

Mr. Clerk.

(Court's Exhibit 7 marked)

(Time noted: 9:05 p.m.)

(In the robing room)

THE COURT: At the request of counsel for the government and for the defendant, I will send a note into the jurors timed at 9:05 p.m., addressed "Jurors: Do you want to suspend deliberations until tomorrow morning, or do you wish to continue deliberating? Judge Pollack."

Is that what you gentlemen want?

MR. FAHRINGER: Yes, your Honor.

MR. KINGHAM: Yes, your Honor.

THE COURT: All right.

(Pause)

THE COURT: "We will be back tomorrow morning."

Do both sides want me to excuse the jury for the evening and return tomorrow morning at 9:30 to continue?

MR. FAHRINGER: I would like that, Judge.

MR. KINGHAM: That will be fine, Judge.

THE COURT: What I normally do in cases of this kind where we have a problem with spectators and so

on, I ask the marshals to keep the people around until they clear the courthouse.

MR. FAHRINGER: I am in favor of that.

THE COURT: Give them a 15-minute head start and also what is running through my mind is whether we can get some transportation up to the places where they can take off from. I think that the thing to do is to call them back into the courtroom and instruct them not to discuss the case among themselves or with anybody else and make some inquiries about their mobility to place of transit.

MR. FAHRINGER: Some people may have cars and things and will be all right.

THE COURT: Jurors with cars?

I would doubt it. Where would they have parked them? If they were parked anywheres, they would be locked up for the night.

MR. KINGHAM: Can you get the marshals to arrange some kind of transportion, Judge?

THE COURT: That will take another half to three-quarters of an hour. I don't see the point of excusing them from further deliberations and have them sit around.

How do you want me to excuse them? Shall

Discussion.

I just send in a note "Please return tomorrow morning at 9:30 and continue."

MR. FAHRINGER: That is fine with me.

MR. KINGHAM: That is fine with me, too, if we can have the marshals keep everybody else in the courtroom.

THE COURT: Here is the note that I would like to send in and I want each of you to specifically agree thatthis is satisfactory to you.

(Pause)

MR. FAHRINGER: That is fine.

THE COURT: Is that satisfactory to the government?

MR. KINGHAM: It is, your Honor.

THE COURT: Is it satisfactory to the defendant?

MR. FAHRINGER: It is, your Honor.

THE COURT: Off the record.

(Discussion off the record)

(Defendant entered the robing room)

THE COURT: Mr. Greenberg, it has gotten late and I imagine that you, along with the rest of us, are weary. We sent a note into the jury which will be marked Court's Exhibit 8 inquiring their preference

and received a note back from them at the foot.

It is now suggested that we should excuse the jury until tomorrow morning in accordance with the second note, which will be marked Court's Exhibit 9, and I have the affirmative approval of the government lawyer, of your lawyer and I would like to know whether you are satisfied and wish this procedure to be carried out as indicated in both of these notes?

THE DEFENDANT: Yes, sir.

THE COURT: All right, that being satisfactory to the defendant and to both counsel, it is approved by the Court and the jury will be given this note to mark with their initials accordingly and after they get this the marshals will be instructed to delay the departure of all spectators until 15 minutes after they have cleared, the jurors have cleared the building.

(Recess)

(Adjourned at 9:20 p.m.)

Requests by the Jury.

United States of America

v. 75 Cr. 1010

Leon Greenberg

November 11, 1975
9:55 a.m.

(Trial resumed.)

(The jury resumed its deliberations at 9:55 a.m.)

(In open court at 10:25 a.m. Jury not present.)

THE COURT: Now, I have two notes here. The first note reads as follows: "It is felt that if all three men were on trial as defendants all men might be considered guilty, but since two men are getting off free the third should also be acquitted. Can you address yourself to the question of immunity?"

The second note says: "The jurors would like to hear your interpretation of a reasonable doubt."

I suppose that this calls for instructions to the jury. Do counsel have any suggestions?

MR. FAHRINGER: May it please your Honor, from the defense standpoint this focuses on my concern on the matter of immunity and I would only like to advise the Court that our position is that if any instruction were to be given

on that subject I think that the law in this circuit is that the grant of immunity in the state jurisdiction is not binding on the federal government and that both of these men, Bernard Roth and Paul Grossinger, are subject to prosecution in this district from an independent source of evidence.

I cited to your Honor the case of United States v. Kiley, decided by the Second Circuit, and another case, your Honor, United States v. Aniello Dellacroce. Both of those cases stand for the proposition that merely because a person has received transactional immunity in the state jurisdiction he is not immune from prosecution in the federal jurisdiction.

I have no objection to your Honor's re-reading your charge on reasonable doubt, except you have my exception to a substantial doubt.

MR. KINGHAM: Your Honor, with respect to reasonable doubt, of course we have no objection to the re-reading of the Court's instruction on that.

On the immunity matter, I believe we brought out what the feelings of the witnesses were with respect to the grant of immunity which, of course, was a state grant of immunity. There was no federal immunity here. And, frankly, the independent evidence rule is always the rule in the

federal court, and so we have no objection to having the jury instructed as Mr. Fahringer suggests.

THE COURT: Suppose you gentlemen put your heads together and put down on a piece of paper what you want me to charge on the subject of immunity, and I will look at it, in the light of my own understanding of the law.

(Pause.)

MR. FAHRINGER: Your Honor, may I step outside for a moment?

THE COURT: Yes.

(Pause.)

THE COURT: I will discuss this issue in the robing room with counsel.

MR. KINGHAM: Your Honor, may I have just one moment? I 'm almost finished with my part.

THE COURT: Yes.

(Pause.)

THE COURT: Do you have a requested charge on this, Mr. Fahringer?

MR. FAHRINGER: Yes. I gave it to Mr. Kingham. Does your Honor want to see it?

THE COURT: Yes.

MR. FAHRINGER: I'm sorry, your Honor,there is one more.

THE COURT: This is quite a departure from what you just said.

MR. FAHRINGER: This is also part of it, your Honor.

MR. KINGHAM: Your Honor, may we take this up in the robing room?

THE COURT: Yes.

(In the robing room:)

THE COURT: Have you got something you want to show me?

MR. KINGHAM: First of all, your Honor --

THE COURT: No. Just have you got something to show me? I've got my mind pretty well made up on what to do here.

MR. KINGHAM: This reflects what happened as a matter of fact with respect to these witnesses, not as a matter of law.

(pause.)

MR. FAHRINGER: Your Honor, may I respond? I won't be lengthy.

THE COURT: I think that the thing to do now is for me to tell you what I think ought to be done here.

It is clear that one or more jurors now is troubled by the aspect of immunity of the two alleged

coconspirators, and that that trouble is diverting that person's or persons' mind from the elements of the charge as I gave it.

By that I mean that one or more of the jurors are adverting to the subject of punishment, which is none of their concern, and I thought I had made that clear.

I could handle that simply by calling that aspect of my charge to their attention and calling so much of the charge to their attention as made it very clear that guilt is personal, and that the only indictment before them for consideration is the indictment against Leon Greenberg. That would span the problem of the law as contended by the defendant, namely, that state immunity is not to be equated with immunity under the federal law, a proposition with which I agree on the assumption that there is independent evidence, as indicated by Mr. Fahringer, of the conduct of the two who are not being considered in this case.

Now, going beyond that area into the nuances of immunity, it would seem to me to be leaving to the jury the issue of law that could arise in the event that the other two were indicted.

What is wrong with that theory of thinking?

MR. FAHRINGER: Well, your Honor, this is what I think is wrong. From the very beginning, your Honor, and

I think the record should show this, I complained about any disclosure in this trial of grants of immunity. Mr. Kingham on his own --

THE COURT: Let me say right at the start that a witness who is testifying in a certain state of mind, whether his mind is conditioned appropriately or inappropriately, should certainly be in a position to say what he thinks he is doing under the circumstances and the influences that affect him.

Now, that means that even if the witness is misinformed on his legal rights and has been given an assurance which in fact is not borne out by the law or the facts, you may nonetheless convey the state of mind that he is under in giving that testimony. So, regardless of whether or not the witness was right or wrong, it would be my ruling, for the purposes of this case, that bringing the fact out was an entirely appropriate thing to do regardless of the legal controversy that you and Mr. Kingham were waging on the subject.

MR. FAHRINGER: Your Honor, going on then, I only wanted to say that I, of course, disagree with that, but you have ruled on that and I realize that is behind us now.

Addressing ourselves to this problem, as I

evaluate the jury's note, they are concerned as to whether or not or why these other men were not prosecuted. I think they should now be advised that they are eligible for prosecution. I think they should be advised that they were not prosecuted, and that the reason they were not prosecuted is that that was a choice, a judgment made by the United States Attorney's office here.

I dislike any terminology about "we're honoring the state's grant of immunity," or any suggestion that "we're bound by the state's grant of immunity." It is a pure matter of prosecutorial discretion, which I don't suggest in any sense is a misuse of that power, but the point of it is that I think under the circumstances, because of the inquiry -- and I will tell you in a moment why I think this is relevant, your Honor, and a matter for the jury's consideration -- I think they should now be told that the United States Attorney has decided not to prosecute them.

Now, that may bear somewhat on that portion of your charge on credibility and motive here. If the jury were under the impression that these people could not be prosecuted under any circumstances by the United States Attorney's Office, that might have one influence on their judgment as to their credibility. If, on the other hand,

the jury knew that they could be prosecuted, but the United States Attorney has elected not to prosecute them, then some juror, I think, could legitimately say, "Well, maybe that is why they said this, or maybe that's why they said that, so that they could be in the good graces of the United States Attorney."

THE COURT: I don't think we are making any progress along this line, Mr. Fahringer, and I am not going to hold up the forward progress of the case with that type of speculation.

I take it that this is your suggestion for the charge?

MR. FAHRINGER: Yes.

THE COURT: And what is your suggestion?

MR. KINGHAM: Your Honor, I go along with you. I was in the process of drafting one.

THE COURT: What about this one?

MR. KINGHAM: I object to the first piece of paper which --

MR. FAHRINGER: I wonder if we could --

MR. KINGHAM: Just a moment, please.

The first paper of Mr. Fahringer states: "The witnesses Bernard Roth and Paul Grossinger do not have immunity under federal law and both of these men could have

been prosecuted in this jurisdiction but were not. It makes no difference what Roth and Grossinger think their grant of immunity amounts to." End quote.

I object to that, your Honor. I don't think that that is the situation. I think that the situation is as your Honor previously stated, and that is that the question of immunity comes out for the jury not as a matter of law but to determine what the state of mind of the witness is.

Furthermore, I think it is obvious from the way I asked the questions that the question was not what is immunity as a matter of law to the witness, but rather what do you understand the terms of that immunity to be.

The second piece of paper which Mr. Fahringer handed up reads as follows: "The witnesses Grossinger and Roth have been promised that they will not be prosecuted by the United States Attorney, and the United States Attorney has considered the state grant of immunity b[illegible] on the government."

That may be true as a matter of fact, your Honor, but I think that the Court has addressed the legal question appropriately here, and so I object to anything about immunity specifically being instructed to the jury as an invasion on the Court's province on this question of immunity.

The question is what does the witness understand immunity to be, and that goes to credibility, and there is no such argument made in this case, that because these witnesses were immunized they were incredible, and Mr. Fahringer had plenty of opportunity to do that.

THE COURT: Before I decide this question, why don't I try this out on both of you? Suppose I were to charge them: Each of you took an oath that you would well and truly try this case and render a verdict in accordance with the evidence, so help you God. The only case before this jury at this time is the case of Leon Greenberg. Punishment of others, if there is to be any, trial of others, if there is to be one, punishment of Greenberg, if the Court is required to impose any, must not under your oath interfere with or divert you from rendering a verdict in accordance with the evidence. It is not the function of the jury to pass on the meaning and effect of state granted immunity to others. The question here is: What does the evidence as to this defendant call for in thise case? Is he or is he not guilty?

The evidence revealed that so far as the New York State courts are concerned, and only the New York State courts, and not the federal courts, the alleged coconspirators Grossinger and Roth were given what is known as transactional

immunity from prosecution for their conduct under state law only. They were not given immunity from prosecution under federal law in the federal courts. They are not before this court or this jury. They have not been given immunity from prosecution under federal law in the federal courts. They are subject to federal prosecution on the very same laws as we are considering in this case.

The evidence indicated that they have been promised that they will not be prosecuted by the United States Attorney and the United States Attorney has considered the state grant of immunity binding on the government, but your attention must be focused on the evidence in this case with respect to this defendant. Did he violate the laws against conspiracy and/or mail fraud according to the evidence beyond reasonable doubt?

Now, what about that? In effect, what I have done is to take in the portion of the request of Mr. Fahringer.

I pause for a moment. Has there been a promise that they will not be prosecuted?

MR. KINGHAM: There is not, your Honor. The statement that was read to them --

THE COURT: I think that that is an overstatement, Mr. Fahringer. You know of no promise that they won't be prosecuted, do you?

MR. FAHRINGER: Your Honor, I was advised that they wouldn't be.

THE COURT: By whom?

MR. FAHRINGER: By one of the lawyers representing them, your Honor, who I spoke to.

THE COURT: Promised?

MR. FAHRINGER: I was told that they had been promised immunity.

I think Mr. Kingham knows I have talked with one of the counsel.

MR. KINGHAM: I know Mr. Fahringer has spoken with their counsel, but even with their counsel what is clear, your Honor, is the statement that was read to both of these witnesses in the grand jury, which is the arrangement, and that is that our office considers that the state grant carries over into this prosecution, but we haven't said that "We promise you."

THE COURT: Where is that statement that was read to them? That should be substituted for this, because the requested statement by Mr. Fahringer I think overstates what the evidence is in this case. I think that that is the thing to call to their attention, because that is the evidence.

MR. FAHRINGER: Your Honor, I wanted to respond

to that. As a matter of fact, I am not trying to be devious at all. I think it is misleading, as I reflect upon it, to use the term "They consider the state grant of immunity binding on them," because there is no basis for that, your Honor. In other words, I am trying to be forthright with you. In other words, if they had decided they wanted to prosecute Grossinger and Roth they would have prosecuted them, and there is no such thing as "We consider the state grant of transactional immunity binding on us." There is no such concept. It is a matter of prosecutorial discretion. Either we are going to prosecute them or we are not, and I think that is in essence here, and to that extent I would like to withdraw my request that the state grant of immunity is binding on them. That merely is saying in another way that "We are not going to prosecute them."

THE COURT: I don't follow your positions at all. They seem to fluctuate as time goes on, Mr. Fahringer. You started right out at the beginning of the trial to say very vigorously that the state grant of immunity did not grant federal immunity. You got up this morning and you said precisely the same thing. You then come along and tell me that the state grant of immunity is of no effect here, but that there is a promise not to prosecute them in the federal court.

Now you want to withdraw the whole thing?

MR. F AHRINGER: No, your Honor.

THE COURT: You leave me in a position where I don't know what you want.

MR. FAHRINGER: Judge, that is not inconsistent. I have said all along there is no grant of immunity in the federal prosecution. I have said all along that the state immunity has no effect on the federal. My position hasn't changed a bit. As a matter of fact, what I am now saying is it is wrong to tell the jury that the state grant of immunity is binding on the government.

My position is, your Honor,that they have no immunity here, and that they --

THE COURT: All right, let's say defendant's position, with which the Court agrees, is that the two do not have immunity from federal prosecution. They could have been prosecuted under state law but for reasons that do not appear in the evidence the New York State authorities decided not to prosecute them under state law. That decision was reflected in the grant to them of state prosecution immunity. As witnesses here they told you that their state of mind is that they would not be proseucted under federal law except for perjury committed in their testimony here.

Now have I got everything?

MR.FAHRINGER: Your Honor, I have to except to that on these grounds: Let me tell you why.

THE COURT: Would you be good enough -- look, Mr. Fahringer, I am getting a little short of patience with you. I want to write out the request to charge. Give me your final version of what your request to charge is, as I should give it to the jury. I am not going to accept any more oral statements on this subject. They sound to me like -- and I don't mean to be offensive -- talking out of both sides of your mouth.

MR. FAHRINGER: I don't think I am doing that, your Honor.

THE COURT: Then I misunderstood you completely, and I apologize, but that is my impression at this moment. Now, you write it out, and if it is satisfactory to me I will so charge.

MR. FAHRINGER: May I see a couple of my notes there, please, your Honor.

(Pause.)

THE COURT: You have asked me to charge that the government has promised that they will not prosecute Bernard Roth and Paul Grossinger. What evidence do you personally have that there was a promise other than the statement that was read to these witnesses when they were before the grand

jury?

MR. FAHRINGER: Wallace Musoff, an attorney in this city with offices on 57th Street -- I don't know his exact address -- advised me -- and I think he told Mr. Kingham that he has talked to me about this matter, so there is no secret concerning this -- that he sat in the office of Mr. Kingham with Mr. Roth and Mr. Grossinger -- perhaps at different times; I am not suggesting at the same time -- and that the government represented to both of those witnesses that they would not be prosecuted in the federal jurisdiction.

Now, that is the source of my authority. As a matter of fact, I asked him at that time --

THE COURT: Do you want to change the word in here that the government "represented" instead of "promised"?

MR. FAHRINGER: No, your Honor, because I think there is no difference. I would assume --

THE COURT: There is a vast difference in my mind.

MR. FAHRINGER: Your Honor, I understand it to be a promise. When the government says they are not going to prosecute you, that is a promise.

THE COURT: What about this?

MR. KINGHAM: May I quote from Government's Exhibit 3501, which is Bernard Roth's grand jury testimony? The exact same statement appears in 3503, which is Paul

Crossinger's, and it was put in the form of a question:

"Q And in return for that grant of immunity, you provided certain information and certain documents to the state; is that correct?

"A [By Mr. Roth] Yes.

"Q Mr. Roth, the government's legal position here, I am advising you, is that inasmuch as we have received from New York State authorities certain information and documents provided by you to those authorities in reliance on a grant of immunity from prosecution, we are similarly bound that you cannot be prosecuted on the basis of any such information or documents we have received or any testimony you give concerning such information or documents. You understand that?

"A Yes, I do."

The exact same statement was read to Mr. Grossinger at his grand jury appearance. I have never made any other statement either to Mr. Grossinger, Mr. Roth, or Mr. Musoff, and in fact prior to the grand jury appearance of both of these witnesses Mr. Musoff was shown in writing the statement which Mr. Mukasey, first of all, for the Roth grand jury testimony, and I, for the Grossinger grand jury testimony, intended to read to his respective clients.

THE COURT: This is a radically different statement than the one that I have been asked to charge. This says that there has been a -- and I use the word "promise" -- not to prosecute those persons by reason of certain matters that were turned over to the federal government. That is far different than a blanket promise.

MR. FAHRINGER: Your Honor, what is still unanswered is if they had -- obviously, they have an enormous amount of independent --

THE COURT: Nothing is unanswered in that statement.

MR. FAHRINGER: I think it is to this extent. I think if they had wanted to prosecute Mr. Grossinger and Mr. Roth they could have, and the suggestion here is that "we couldn't have." I don't know if Mr. Kinghma wants to say that. If he is suggesting to the Court that "we couldn't have prosecuted them," it seems to me they could have been prosecuted and they weren't, and I conclude from that and from the information that has been supplied to me by Mr. Mussoff that a decision was made, and I think this is the crux of the matter, that a decision was made in the United States Attorney's office that they would not prosecute Mr. Grossinger and Mr. Roth.

MR. KINGHAM: Your Honor, I think it should be

made clear that we are not only talking in the past tense.

First of all, the statement I just read refers to the matters which they had turned over to the state, and we therefore considered that we had gotten them as immunized matters as it involves information and documents, namely, statements they had given and documents they had turned over; and, furthermore, that in the present tense these men are still liable for prosecution.

We've got a conspiracy count here with overt acts that are still in statute and it is still possible as a matter of law that these men can be prosecuted.

MR. FAHRINGER: Your Honor, now, at this point, I think that the Court is entitled to know whether the government has made a judgment here as to whether they are going to prosecute them or not.

THE COURT: That is not what the jury is asking for, and I am not going to use this as a forum for discovery on that score.

MR. FAHRINGER: Your Honor, may I just say this for the record, and then I will keep quiet. I think it would be a grievous error here to suggest to this jury that these men might still be prosecuted.

THE COURT: You did precisely that at page 17 of the record. You stated: " I think they are subject to

prosecution if there was an independent source of evidence on which they could found their prosecution."

And I think the statement made by Mr. Kingham that they cannot prosecute them is an incorrect one.

MR. FAHRINGER: Your Honor, that meant that they could have been prosecuted in this indictment, not that they could prosecute them tomorrow or the next day.

THE COURT: That is not the way I read it. That is not the way I understood it.

Furthermore, your statement at page 41 of the record seemingly contradicts what you have just said, and I quote it: "My understanding [referring to yourself] is that Mr. Grossinger and Mr. Roth are not immunized from prosecution."

MR. FAHRINGER: That is right. Your Honor, that is not inconsistent with anything I've said.

THE COURT: I'm just wondering whether I shouldn't read those statements and the statement of each of the witnesses given under oath as being the matters before this jury.

MR. BLOCK: Mr. Roth is page 48, your Honor, line 13.

THE COURT: Yes, I see that.

MR. KINGHAM: I think I should point out here

your Honor, also -- first of all, I object to going into such detail on the immunity question, but that notwithstanding I should point out that at page 15 in my opening, at line 8, I made the following statement: "You will hear when they testify that in 1974 they received immunity from New York State in connection with an investigation into this matter and that the federal government considers itself bound by the immunity grant that they received in 1974 from the state.

"That may sound a little complicated, but simply put we will show you that these men can't be prosecuted for the actions they took in connection with the scheme to defraud. They can, however, as you will hear, be prosecuted for perjury if they should lie to you from the witness stand."

If I may, your Honor, the problem that I see is that we are really sort of all over the map on the question of the extent and applicability of immunity here, and that to instruct the jury in detail on that matter with what is not evidence -- the only evidence is the witness' understanding of what immunity is -- I think to go beyond that perhaps is out of the jury's province.

THE COURT: Isn't that what the evidence is before the jury?

MR. KINGHAM: The witness' understanding?

THE COURT: Yes.

MR. KINGHAM: Yes, your Honor.

THE COURT: I will mark as the next Court exhibit the request of the defendant.

MR. FAHRINGER: May I ask your Honor put in reasonable doubt, too.

THE COURT: No, I haven't asked you for that. I just want to tend to this at the present time without complicating the matter.

This will be Court's Exhibit 10, I believe, the request of the defendant on this subject.

(Court Exhibit No. 10 was marked for identification.)

THE COURT: And what do you want me to mark as yours?

MR. KINGHAM: I don't have one, your Honor. I was giving you what the facts were as we understood them, and that is what I've quoted actually from the openings.

THE COURT: Subject to such later revisions that are necessary, do you want to give me a statement of what you would like to have me charge on the subject?

MR. KINGHAM: First of all, I object to Court's Exhibit 10, your Honor.

Secondly, I would ask that the Court charge that the evidence before you is that the witnesses testified that

it was their understanding --

THE COURT: I'm not going to characterize it in any event. I will read it to them.

MR. KINGHAM: Or read their testimony, your Honor, and that it be left at that, together with the matters which your Honor read when we began this conference on the issue of guilt being personal, and that the only defendant on trial is Leon Greenberg, and so forth, with respect to punishment.

MR. FAHRINGER: I except to all of that, your Honor.

THE COURT: All right. That draws the issue very closely.

How about this statement? Do either of you object to this statement: It is not the function of the jury to pass on the meaning --

THE CLERK: Excuse me, there is another note.

THE COURT: -- and effect of state-granted immunity to others. The question here is what does the evidence as to this defendant call for in this case? Is he or is he not guilty?

Do you object to that?

MR. FAHRINGER: I'm sorry, may I read that?

MR. KINGHAM: I have no objection to that, your

Honor.

MR. FAHRINGER Note that I except to that, your Honor.

THE COURT: All right.

The next note that I have here is:

"Your Honor, the jurors find that we're deadlocked."

So we'll have to respond to all three notes.

MR. FAHRINGER: Are you going to read the reasonable doubt charge to them again, your Honor?

THE COURT: I think that to avoid controversy you will have to just await and see what I do and take appropriate objection and exception to it.

MR. FAHRINGER: May I at this time simply put on the record that if you were to read the reasonable doubt charge I would like to have the portion of the character evidence read, too, because of that being a basis for reasonable doubt in and of itself.

THE COURT: There are other aspects of the charge that deal with the subject of credibility, and so forth, and were I to volunteer to overweigh the question in any particular way it seems to me that I would have to start back again at the beginning.

Further Charge of the Court.

(In open court, jury present; 11:40 a.m.)

THE COURT: Good morning, ladies and gentlemen.

I have several notes and I'm going to try to respond to all of them.

The first note to which I will respond will relate to the question of immunity; and that question is marked as Court's Exhibit 11.

(Court's Exhibit 11 marked.)

THE COURT: The subject was referred to by both lawyers and by two witnesses.

I will now read from the record what was told to us in that regard.

In his opening statement, Mr. Kingham said:

"Two of those witnesses are Bernie Roth and Paul Grossinger and both of them will be testifying under a grant of immunity from prosecution. You will hear, when they testify, that in 1974 they received immunity from New York State in connection with an investigation into this matter, and that the Federal Government considers it is bound by the immunity grant that they received in 1974 from the State.

"That may sound a little complicated, but simply put, we will show you that these men can't be prosecuted for the actions they took in connection with this scheme to

defraud. They can, however, as you will hear, be prosecuted for perjury if they should lie to you from the witness stand."

The next statement that we heard on that subject was from Mr. Fahringer, who stated:

"I think they are subject to prosecution if there was an independent source of evidence by which they could found their prosecution, and I think the statement made by Mr. Kingham that they can not prosecute them is an incorrect one."

The next statement that was made in this record was also by Mr. Fahringer:

"My understanding is that Mr. Grossinger and Mr. Roth are not immunized from prosecution, but you will hear him on that subject, and I have confidence that Judge Pollack will properly and with wisdom instruct you on that matter."

The next statement that we heard was from Mr. Roth who in order to set the stage of the basis on which he was testifying, as to his mind, what was running through his mind, so that you could evaluate him and his testimony, this is what he thought. The question is on direct examination:

"Q What do you understand the terms of that grant of immunity to be?

"A That, as I understand it, is transactional immunity which means that anything that arises from this incident I would not be held criminally liable for except if I made a false statement or testified falsely, in which event I would be subject to criminal prosecution for perjury.

The next statement that we heard was that of Mr. Grossinger, and he was questioned:

"Q What do you understand the terms of that immunity to be?

"A I am free of any prosecution in this particular matter with the exception of the commission of perjury upon my part."

The jury will recall that throughout the charge, I instructed you that under the law you must focus on the evidence in this case with respect to this defendant.

Did he violate the laws against conspiracy and/or mail fraud according to the evidence beyond reasonable doubt? You are not asked to judge or find a verdict against anybody else in this case.

Your oath as jurors was, each one of you raised your hands and swore that you would well and truly try this case and render a verdict in this case in accordance with the evidence, so help you God.

The only case before this jury at this time is

the case of Leon Greenberg. Punishment of others, if there is to be any, the trial of others, if there is to be one punishment of Greenberg, if the Court is required to impose any, must not on your oath interfere with or divert you from rendering a verdict in accordance with the evidence in this case as you swore, so help you God.

Guilt in a criminal case is personal. It is not based on what others do or don't do. It is not based on what may occur with others or may not occur. Unless the Government has established beyond reasonable doubt the elements of the crime charged here, you must acquit.

But if the Government has established beyond reasonable doubt the elements of the crime or crimes or any of them, you are required under the dictates of your conscience and the law to find in accordance solely with the evidence before you.

Now, Bernard Roth and Paul Grossinger have been promised by New York State that they will not be prosecuted by New York State and they were promised that they would not be prosecuted by the United States Attorney on the matters which New York State turned over to the United States Attorney.

It makes no difference what Mr. Roth and Mr. Grossinger believe as to the extent of their state grant of

immunity in this case. You may consider that they have been promised not to be prosecuted by the Federal authorities in this matter, and you may also be guided by the fact that the question in this case is not what affects them, but you must find in this case a true verdict on the evidence in this case in accordance with that evidence regardless of any other consideration.

Now, the second of the notes was that you would like to hear my interpretation of a reasonable doubt. I had difficulty reading the word "your." It is, "your" interpretation of a reasonable doubt. And by that, I take it you want that portion of the charge reread to you, is that right, Mrs. Heitner?

THE FORELADY: Yes.

THE COURT: Is there any other part of the charge that you want reread to you and on any aspect or just that part?

THE FORELADY: No, just that part.

THE COURT: A reasonable doubt is one that arises out of the evidence in the case or the lack of evidence. It is a doubt which is substantial and not merely shadowy. A reasonable doubt is one that appeals to your reason, your judgment, to your common sense and to your experience. It is not an excuse to avoid performance of an unpleasant duty.

Further Charge of the Court.

A reasonable doubt is such as would cause prudent people to hesitate before acting in matters of importance to themselves.

Putting that a little differently, if you are confronted, as indeed you are here, with an important decision, and after reviewing all the factors that are pertinent to that decision contained in the evidence before you, you find yourself beset by uncertainty and unsure of your judgment, then you have a reasonable doubt.

Conversely, in that same situation, if you have taken into account all the elements that pertain to the problem and you find you have no uncertainty and no reservation about your judgment on the evidence before you, then you have no reasonable doubt.

Proof beyond a reasonable doubt does not mean proof to a positive certainty or proof beyond all possible doubt. If that were the rule, few persons, however guilty, could ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any fact which in its nature is not susceptible of mathematical certainty. So that kind of certainty, as I have tried to indicate, is not the test.

You are going to have to rely upon your own common sense and general experience in evaluating the

evidence.

Now the third of your notes merely indicates to me that you have not reached a determination. I will ask you to go out at the present time and deliberate further.

You may go out.

(At 12:00 noon, the jury retired for further deliberations.)

THE COURT: The three notes are marked Court's Exhibit 11.

Yes, Mr. Fahringer?

MR. FAHRINGER: Did you want us, your Honor, or did you invite us to note our exceptions?

THE COURT: I suggest that you do whatever you are required to do in the proper protection of your client.

MR. FAHRINGER: Thank you, your Honor. May I note an exception, then, most respectfully, to the Court's instructions to the jury, and in particular, your Honor, I would except to your statement to the jury that what punishment may befall others, or what trial others may be subjected to was inappropriate under the circumstances because the Government apparently concedes that they are bound by the grant of immunity from the state and to that extent, I think it was misleading and the jury may conclude that Mr. Roth and Mr. Grossinger may be prosecuted.

Your Honor, I would, of course, except to the reading of the portions of the opening by Mr. Kingham, the reading of the portions of my opening, the reading of the statements of Mr. Roth and Mr. Grossinger on their understanding of immunity, as being inappropriate for the reasons I have stated to you earlier.

Your Honor --

THE COURT: All of those reasons are stated on the record, aren't they?

MR. FAHRINGER: I believe they are, your Honor.

THE COURT: All right.

MR. FAHRINGER: And if it please, your Honor, in view of the note, I think it was the third note, which is marked Court's Exhibit --

THE COURT: All of those three notes are marked Court's Exhibit 11. It is the third of the three.

MR. FAHRINGER: Where the jury indicated it is deadlocked, I would, based upon that communication, I would now move for a mistrial, your Honor.

THE COURT: Motion denied.

We will stand in recess now for the time being.

MR. KINGHAM: Thank you, your Honor.

(Recess)

Request by the Jury.

AFTERNOON SESSION

12:55 p.m.

(In open court, jury not present.)

THE COURT: We have a note from the jury:

"Your Honor, may we please have the minutes of the board meeting," and then after that, it says, "Horsemen's testimony."

The board minutes were read into the record so I suppose that the best way is to either read the record or to have the reporter or myself read right from the executive committee meeting of November 2nd, read the front part, the body and the signatures.

Isn't that the most convenient way of dealing with that far question?

MR. KINGHAM: Your Honor, I'd just as soon have it read from the record if you have no objection.

THE COURT: Is it fully in the record?

MR. KINGHAM: It is indeed, your Honor.

THE COURT: Then we can find it in the record.

MR. KINGHAM: Your Honor, that is at page 530.

Your Honor, with respect to the horsemen, I have that from the index. I can read it to the Court. It is in volume 3 of the transcript.

Discussion.

The first horseman was James Curran, and his direct began on page 361 of the record, line 19. His testimony ended on page 380.

The next was, the next witness in order, Mr. Richard Manzi.

THE COURT: Are the pages right there?

MR. KINGHAM: He testified straight through.

THE COURT: Let's just identify them. Mr. Curran, Mr. Manzi, who else?

MR. KINGHAM: Mr. Berkner, Mr. Carbone and Mr. Del Campo.

THE COURT: Yes.

MR. KINGHAM: Those were the five, your Honor.

THE COURT: All right, the reporter can follow those along in sequence.

All right, get the jury.

(At [illegible].00 p.m., the jury entered the courtroom.)

THE COURT: Ladies and gentlemen, the court reporter will read to you the portions of the record that you have requested.

JUROR NO. 5: I can't hear you.

THE COURT: I say the reporter will read the portion of the minutes that you have requested.

The minutes of the meeting were read into the

record, so he will read from the record rather than supply you with the paper itself. The paper was not marked. It was read into the record.

(Record read.)

THE COURT: Is there anything else that the jury wants at this time?

THE FORELADY: I don't believe so.

THE COURT: We will now recess and the jury will be taken out to lunch.

(At 1:30 p.m., the jury retired from the courtroom.)

(Court's Exhibit 12 marked.)

THE COURT: I would think, gentlemen, that you could probably count on at least an hour and a half because the arrangements will have to be made, so I would say about three o'clock.

MR. FAHRINGER: Thank you, your Honor.

MR. KINGHAM: Thank you, your Honor.

(Recess)

(In open court, jury not present, 4:25 p.m.)

THE COURT: You may bring the jury in. They have a verdict.

(Jury present.)

THE CLERK: Members of the jury, please answer to

your presence as your name is called.

(Jury roll called - all present.)

THE CLERK: Madam Forelady, have you reached a verdict?

THE FORELADY: We have.

THE CLERK: Is your verdict as follows:

"Your Honor, the jury finds the defendant guilty on all counts"?

(Jury polled and all answered in the affirmative.)

THE CLERK: And so say you all.

THE COURT: Ladies and gentlemen, that completes your service in this case. The clerk advises me that you are excused from further jury service and your attendance cards will be given to you by giving them to Miss Heitner for distribution.

Thank you for your service. You are now discharged.

(Jury excused.)

THE COURT: Mr. Fahringer?

MR. FAHRINGER: May I reserve my rights, your Honor, to make any motions and I will make them within the statutory period of time that is allowed me under the law?

THE COURT: All right.

A presentence report will be ordered here. What

is the situation with respect to bail?

MR. KINGHAM: Your Honor, the defendant at present is released in Mr. Fahringer's custody. In essence, it is a release on his recognizance to Mr. Fahringer. We have no objection to continuing those bail terms pending sentence, with one exception.

We request that the defendant be required to surrender his passport. Other than that, we have no request for specific bail.

THE COURT: Mr. Fahringer?

MR. FAHRINGER: Well, your Honor, let me say this: I have no serious objection to that. Mr. Greenberg doesn't have any intention of leaving the country. I don't think there is any need --

THE COURT: It is the ordinary request. It is not a special request. In fact, that being the ordinary request, it is generally arranged at arraignment rather than at this stage.

So I assume that the Government is perfectly content to have the passport released in your custody. Isn't that all right?

MR. KINGHAM: That is no objection, your Honor, on Mr. Fahringer's assurances that the defendant will not leave the country pending sentence, so there is no problem.

Discussion.

THE COURT: He can't be sure for the defendant, but he will hold the custody of the passport.

MR. KINGHAM: I understand.

MR. FAHRINGER: I will do that, your Honor.

MR. KINGHAM: No objection.

THE COURT: Bail is continued accordingly.

Is there a point of time in about the second week of January which is more agreeable to counsel and the defendant than any other for the date of sentence?

MR. KINGHAM: Anytime is fine for the Government, your Honor.

MR. FAHRINGER: May I just consult my calendar, your Honor, because I know I have a case set down, your Honor, for the 5th of January, and it is out of state.

If it please your Honor, I'm scheduled to go to trial in Cincinnati on the 5th of January. That case is only expected to last a week.

THE COURT: Do you think you will be back during the week of the 12th?

MR. FAHRINGER: I would expect, your Honor, that I would. If you could maybe, perhaps, put it towards the end of that week.

THE COURT: How about the 14th?

MR. FAHRINGER: That will be fine, your Honor.

Discussion.

THE COURT: If you find, or Mr. Greenberg finds, or the Government finds the date inconvenient, equitably or legally, you will let me know. But in the meantime, we will fix January the 14th in Courtroom 905 at 9:45 a.m. for the date of sentence.

MR. FAHRINGER: Your Honor, would you welcome from me a sentencing memorandum that I have done in the past, and I will serve a copy on the Government?

THE COURT: Yes. I have had occasion to see one of your memoranda, and I thought it was helpful.

Now, so far as any motions that you have in mind, the rules give you seven days if you want to make them that way, or you can make them orally at the present time.

MR. FAHRINGER: Well, your Honor, may I consider that? I don't know that there will be any motions.

THE COURT: I will give you the chance to re-argue any motion in writing that you wish to make now, if you wish to make it, but I'm not saying that you should. You decide that yourself.

MR. FAHRINGER: Your Honor, let me consult on that.

THE COURT: All right.

MR. FAHRINGER: I will make it in writing if I'm going to make it.

Adjourned.

THE COURT: Very good. All right.

Has everybody gotten their own exhibits back?

MR. KINGHAM: I have some of the defendant's exhibits. I will return them to Mr. Fahringer, your Honor.

THE COURT: All right.

The jury's written report of verdict is marked Court's Exhibit 13.

(Court's Exhibit 13 marked.)

THE COURT: That concludes the matter for the day.

MR. KINGHAM: Thank you, your Honor.

(Court adjourned to January 14, 1976, 9:45 a.m., Room 705.)

Sentencing Proceedings, dated 1-21-76.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

- v s - 75 Cr. 1010

LEON GREENBERG, :

Defendant. :

----------x

B e f o r e :

HON. MILTON POLLACK,

District Judge.

New York, N. Y.
January 21, 1976

A p p e a r a n c e s :

THOMAS J. CAHILL, ESQ.,
United States Attorney for the
Southern District of New York;
By: T. BARRY KINGHAM, ESQ.,
Assistant United States Attorney
- and -
IRA H. BLOCK, ESQ.,
Assistant United State Attorney.

HERALD PRICE FAHRINGER, ESQ.,
Attorney for Defendant Leon Greenberg.

Sentencing Proceedings, dated 1-21-76.

THE CLERK: United States of America v. Leon Greenberg for sentencing.

[Both sides ready.]

THE COURT: Mr. Fahringer, I will hear you in connection with this application.

MR. FAHRINGER: If it please your Honor, those of us who earn our living speaking for others I think face our greatest challenge when we are called upon to plead for any man who faces what I consider to be the most terrifying sanctions any civilized society can impose upon him, and I tell your Honor, quite frankly, in this case particularly that responsibility weighs rather heavily on me because I feel rather deeply about Mr. Greenberg's cause, and I think this case is an unusual and unique one.

I have supplied your Honor with a lengthy sentencing memorandum, perhaps too lengthy, but I tried, within the limits of my ability, to furnish you with all of the material that I thought would in any way be helpful in guiding you in making that awesome judgment.

It would be wasteful for me today to argue that we have strenuously contested this accusation, because that has now been resolved by a jury, to our disappointment and distress.

But I think the factors that I have stressed

in my sentencing memorandum warrant merciful treatment here and leniency, and I would only like this morning, if your Honor will indulge me, to highlight a few of those. I do not intend to go through all of the detail that I have developed in that document.

For over a century in this country there has been a debate ranging whether the punishment should fit the crime or the punishment should fit the person. Under both of those standards, your Honor, I believe, in this circumstance and under the facts of this case, leniency is warranted.

The accusation here was that Leon Greenberg spent $4,856 of the Raceway's money, misspent that money, and in a fraudulent fashion.

I think, your Honor, that I can make a case today that really the uniqueness of this prosecution lies in the fact that no one was really harmed. I know the argument will be made by the Government that the community or society is harmed, but let me just deal with that for a moment.

Your Honor, when this matter was brought to the Board of Directors' attention, it came out on the trial, and we have now furnished you with further verification of this in documentation, that an investigation was conducted

internally under the supervision of their house counsel and implemented by their auditors. Admittedly, it was not as deep an investigation that we eventually went into --

THE COURT: Was any report filed of that independent auditor's investigation and what it consisted of?

MR. FAHRINGER: A report, your Honor?

THE COURT: Yes.

MR. FAHRINGER: No, there was none.

In any event, your Honor, this investigation, which I hope at least is undisputed, although perhaps it could have been formalized better, I do not quarrel with your Honor's comment to that extent, indicated that events had occurred, Horsemen's Outings had taken place, and that these expenditures were warranted.

As a consequence, and your Honor I notice, because I had the privilege to examine the probation report, I notice that there is some concern expressed about why the check was held, and if you will permit me I would like to address myself to that because I had some say in that matter.

A determination had been made that the check should be held, and when I came --

THE COURT: Which check is this?

MR. FAHRINGER: This is the check, your Honor,

that involved Mr. Grossinger's returning the money, his certified check.

I think you are entitled to know at this critical moment what my feelings were about that.

When I was introduced into the case, it was reported to me that their investigation had indicated that the outings that occurred and the funds had been properly spent, and yet we were faced with this check that had been returned by Mr. Grossinger.

I must tell you very candidly that I was worried that if we returned the check: we were damned if we do: we were damned if we didn't. If we kept the check, it seems to me, with the information that had been supplied to me, that that was unwarranted because the expenditure was proper. If we returned the check, there was always a likelihood of a stockholders' derivative action, so I advised that the check should be held in status quo. It was placed in the safe until ultimately subpoenaed by the Government.

My judgment on that matter may have been poor, but at least, your Honor, that is why the check was held in a state of suspension for the period of time. It seemed to me that at that point it was appropriate to await the conclusion of the investigation and perhaps the trial to determine the propriety of holding those funds.

In any event, your Honor, since all of this has happened, the Board of Directors, I think in a remarkable letter, and, of course, we know they are the governing body of this corporation, elected by the shareholders, have represented to this Court that they have never had any reason to question Mr. Greenberg's honesty and integrity. They still have confidence in him and they have re-affirmed that to you in a letter that you have possession of.

Your Honor, I want you to know this, because I did not see it in the probation report, but Mr. Greenberg, although he has resigned from the racetrack, he had an employment contract with them. He is still receiving full salary, and that matter was discussed by the board of directors even though I think it is a contractual right that is a rather firm one, but they certainly concurred in that.

So that even though he is not working in the Raceway, he still is being paid a salary, but that has been provided for, your Honor, under a rather detailed and complete employment contract. But I think you should know that.

I do not believe, your Honor, that the shareholders were injured by this. You may be shocked at my saying that, but when you look at the history of what Mr. Greenberg had done for the racetrack, his unsparing devotion

to that enterprise, the ingenuity and energy that he devoted to it in making it one of the most successful businesses in the eastern part of the United States, I think in the long run, your Honor, the shareholders have benefited by his conduct and his dedication to the Raceway.

Your Honor, I won't devote much more time to that, except to say that in the bookkeeping of a man's life it seems to me at this momentous moment he has a right to say this is what I have achieved for this enterprise that I am alleged to have defrauded.

It occurs to me, your Honor, that the good has to be considered with the bad, and in this instance I believe that his accomplishments, his achievements, as it relates to the Raceway, far outweigh the $4,000 that someone could say was wrongfully taken.

Your Honor, and hear me on this now, if you will, there has been full and complete restitution made, and I am sorry that that matter is clouded; and if you will allow me, let me explain some of the confusion that you quite properly may have in your mind about that.

Shortly after the verdict was returned, I received a call from Mr. Greenberg and he indicated to me that he wanted to replace these funds, and I was in accord of that, but I only wanted to be sure of one thing, your

Honor -- I think you will understand this as a lawyer -- I said I did not want to in any way prejudice his appeal. That is the only restriction that I was concerned about.

I suggested that when he returned the money he ought to do it by letter. I helped him, quite candidly, your Honor, in some of the thoughts that were expressed in that letter, and the only thing we said is without prejudice to any appeal; because, your Honor, speaking very frankly, I did not want to be confronted in an Appellate Court with an adversary saying: Well, they have returned all the money. I wanted to allow the options open, that we could say at least it was without prejudice.

Your Honor, it was never our intention that any conditions or any restrictions of any kind be placed on the return of this money.

Mr. Greenberg, who is here in court, and Mr. Fausner, who is here in court, and Mr. Sussman, who is here in court, that check was delivered to Mr. Fausner. Mr. Greenberg never spoke to Mr. Fausner about it. He said, "Here is my check, here's the letter." We never told him to put it in a savings account, interest-bearing, or to have it held in escrow of any sort.

What happened, I understand, because I was stunned, your Honor, when I saw your concern about this

and the evidence in the probation report that seemed to be confusing, I contacted immediately Mr. Fausner and he indicated to me that when the funds were received they immediately notified their auditors, or their accountants, and the question was: How should this money be treated? Obviously it would be treated as income. But I would guess back in the year that it should have been properly reported under the Government's theory.

The auditors apparently indicated to them that for the time being it ought to be placed in a special account along, incidently, with other funds of the Raceway, also located in that account, and to draw interest. It has now, your Honor, been placed in their regular account. It is a part of their general account, and so that I think I can say to you today, in deadly earnest, that the monies have been fully restored to the Raceway.

And I invite your Honor: if you have any question about that, we would welcome your speaking to Mr. Fausner directly, if it would please you, or Mr. Sussman. They are both here to answer any questions you have on that matter.

So that on the subject of the offense itself, we believe, your Honor, that the Raceway was not harmed; certainly Grossinger's was not harmed. We do not believe

the public was harmed, and if there was, your Honor, any injury here, it has been completely rectified by Mr. Greenberg's restoring the funds to the company.

Your Honor, let me just now speak for a moment about another matter that I think is of grave significance.

Leon Greenberg is the father of two fine boys. You have read something about them in the pre-sentence report. Henry is fourteen years of age, and he attends school in the Monticello area. Andrew is at Cornell.

Mr. Greenberg has devoted a great deal of time to these two boys because of the difficulties their mother has experienced over the years, and that is also detailed in our report.

I feel, your Honor, that an important consideration before you at this crucial moment is the young sons and the need that they have for their father and his guidance and counsel in these critical years of their life.

You know, your Honor, and we cite for you the ABA standards where they indicate this is a valid consideration, the Court might take under advisement the injury to innocent people through the loss of a member of a family.

Finally, your Honor, I would like to say that we have supplied your Honor with some 63 letters taken, I represent to the Court, from some 222 or more that were

received on behalf of Leon Greenberg. And again, your Honor, at this moment in a man's life when he faces these sanctions, it seems to me he should be allowed to stand before this Court and say this is what I stand for, this is what I have done, this is what I have achieved.

We have attempted to harvest this esteem through these letters that we have supplied to you. It is a cumbersome way, and I do not think it is the most efficient way of bringing this to the Court's attention, because there is no way that we can really spread before you his entire life, all the things that he has done.

But I would hope, your Honor, that there is no doubt in your mind that at this stage Mr. Greenberg has devoted an awful lot of energy, time, and, I might add, money to helping community groups, doing what I think is in the best traditions of good citizenship in trying to give assistance to those less fortunate in the community.

You have letters, if I can just, your Honor, please capsulize them, from community groups such as the JC's, the Chamber of Commerce, the NAACP, fire departments, care centers, all attesting to how he has helped them either by devoting time to their service or by giving them legal advice or by contributing funds to their program.

Religious groups, charitable groups, leaders of

of the community have come forward and spoken in his behalf, professional people, public officials, journalists, prominent businessmen have all uniformly said that Leon Greenberg is a man of integrity, a man of outstanding and remarkable qualities that deserves another chance.

Finally, your Honor, in closing, let me just say this: I think that Leon Greenberg, in his almost fifty years now, has had a distinguished career as a lawyer, as a prosecutor, as the president of the Monticello Raceway, and as a community leader. It is sad indeed at this point in his career that it should be so deeply gashed by this most unfortunate conviction.

He has been forced, in his small community, as he will tell you, to drink his shame to the dregs. He has been branded a felon and, as your Honor knows, he now risks disbarment and the loss of the license that has provided him with his livelihood since he got out of law school.

I think most important of all, your Honor, that I ask this question of the Court: What possible purpose would be served in confining Leon Greenberg, putting him in prison, where there is really no need for rehabilitation, where there is no threat to the community? And from the deterrent standpoint, your Honor, where you have before you at least a case you know well, that, I

think, lends itself to some doubt or misunderstanding about the circumstances. It is not the typical fraud case where the proof is compelling, where the malice is clear, where the criminal intent is obvious.

I would like to think, your Honor, even though I stand here as the loser, it seems to me, your Honor, that the issue is a unique one, and one that deserves your, I think, careful consideration.

I would like to think, your Honor, that, in your good judgment and compassionate consideration of this case, that society is better served by allowing Leon Greenberg to remain with his family as an integral part of that emotional union, try to rebuild his life and continue doing the good that he has so amply demonstrated in the past.

Thank you, your Honor.

I think Mr. Greenberg might want to say something.

THE COURT: Mr. Greenberg, is there anything that you want to say on your own behalf before imposition of sentence?

DEFENDANT GREENBERG: Yes, sir.

If the Court please, I want to say at the outset that I love my country, I love the community in which I live, and I respect and love the judicial system in which

I have worked most of my professional life.

I think it would be appropriate, sir, if I just brought to light two situations that deal with punishment, the type of punishment I have and will continue to suffer. I have an onerous, serious and great responsibility to two kids, two great boys, of whom I am so proud.

As a result of this conviction, I have been disgraced in this community where I have been born and raised. I was born and raised in this community and know everyone in this community and everyone knows me. I know their families intimately, I know their businesses and their farms, and they knew me and my brother, a leading physician in the community. My brother-in-law is a dean of a college, and we are a family that is very proud there.

And every day I must get up and walk through this community until I come home. And it is a little different than being born and raised in a large city where one can get lost, where you can get up and buy a newspaper, go down to have a cup of coffee and not see anyone, and not be seen. That's not my life at home. And I intend to live the balance of my life out in my community; my father before me and my mother before me and my children I know after me.

Secondly, your Honor, I have the unique situation.

I have a board of directors who have stood behind me, have exonerated me, have found me guiltless from the inception to the present time. And they have honored my contract obligations which says I have a leave of absence which I'm entitled to compensation for one year when that time terminates.

Your Honor, normally this could and should inure to the benefit of someone who does have a career, where he's put eighteen years of his life and soul into it, but I also have been working for a company that is subject to a regulatory agency, which requires licensing, and properly so, for the state in which I reside.

As a result of this conviction, this backing, complete reinforcement on the part of the entire board of directors, who represented the leading citizens of my community, I was forced to immediately resign, submit my license back to the wagering board; and so, in effect, eighteen years of my life, which I devoted everything to, is completely washed out.

I now stand before this Court totally humble, understanding, being aware of what has transpired, and I promise this Court that I will give the balance of my life and devotion to my family, to the community in which I reside in, and I understand the unique nature of the

problems I have sustained and I pray that this Court gives such consideration to the accomplishments of my life which have been devotion and dedication to my community, to my peers.

Thank you very much.

THE COURT: This check of December 19th that you made out to the Sullivan County Harness Racing Association for $4,856.16, has that cleared the bank?

DEFENDANT GREENBERG: Yes, sir, of course.

THE COURT: How is the collection recorded in the financial and corporate records?

DEFENDANT GREENBERG: They will have to amend their returns for 1970. The check was issued as a payment for those horsemen's affairs, and now that the check has been reimbursed, the 1970 return will have to be amended and it will have to be reported as income.

THE COURT: What is the record, is it an unconditional payment to the Raceway?

DEFENDANT GREENBERG: Absolutely.

THE COURT: Is the money refundable to you in any circumstance?

DEFENDANT GREENBERG: No, sir.

THE COURT: Directly or indirectly?

DEFENDANT GREENBERG: Directly, indirectly or

any other way. It was presented to -- it was given as complete restitution without prejudice to my rights.

THE COURT: When you say "without prejudice" to your rights, are you talking about without prejudice to your criminal case?

DEFENDANT GREENBERG: That's exactly what I meant, sir.

THE COURT: That is not the way the check was recorded initially.

DEFENDANT GREENBERG: Sir, I have absolutely no control of what transpired.

THE COURT: I will deal with that in a minute.

Does the Government have anything to say on this sentence?

MR. KINGHAM: If I may, your Honor?

THE COURT: Yes.

MR. KINGHAM: If your Honor pleases, the Court knows it is not the Government's practice in the Southern District of New York to comment on or recommend specific sentences for defendants, and we certainly do not do so here, because that is solely a matter for the Court's discretion.

However, there are certain things that I think I should point out on behalf of the Government here.

First of all, as the Court knows, the facts in this case are very clear. This is no misunderstood business agreement, no difference of opinion between Greenberg and Grossinger's, as to who would pay what. It is simply an agreement that the track will pay the bulk of the bar mitzvah expenses, and on phony bills. And that those expenses would be calculated at cost.

Indeed, as the Court knows from reading the probation report, there are others, even in Mr. Greenberg's family, who report to Probation that the items were to be billed at cost and support Mr. Grossinger's testimony.

So this is no misunderstanding, it is simply larceny by trick, your Honor, and should be punished as such.

With respect to the investigation, the investigation, as pointed out to Probation, and as apparently reflected in the minutes of the board of directors and in our interviews with the auditors of the racetrack, this is simply a whitewash by Mr. McBride, Mr. McBride being a law partner of Leon Greenberg, and at that time a house counsel and, I believe, secretary of the Raceway.

He was simply assured, after reviewing the documents, assured by Mr. Greenberg, that everything was okay. Mr. Rubinstein, the auditor, never saw the documents.

All he did was talk to Mr. McBride, and then the two of them reported, as Mr. Greenberg notes in the board of directors' minutes, that the case go to trial and exclude it from evidence; that the documents had been reviewed by Mr. McBride and Mr. Rubinstein, the auditor, and all documents have been found to be in order. Of course, all the documents were in order because they were made to look like they were in order because they were phony bills.

Indeed, even though Mr. Greenberg was offered a chance at trial to produce testimony by Mr. McBride, or a report of some sort of investigation that had taken place, he declined to do so.

I submit, your Honor, that this business with the restitution check, which has come to the Court's attention, is the same type of a flimflam that was going on in 1974 with Mr. Grossinger's check returned to the Raceway.

First we have Mr. Sussman, the chairman of the board of directors of this corporation, telling the probation officer that the check went into an escrow account at Mr. Greenberg's request. We then had Mr. Fausner, the president of the corporation, telling the probation officer, "No, it didn't go in at Mr. Greenberg's request. I didn't talk to Mr. Greenberg about it. It was the board of

directors that decided to put it into escrow." And now we are told, as Mr. Greenberg indeed told Probation, that this money has been absolutely and fully restored to the Raceway.

And I ask this, your Honor: With all of this and the evidence that your Honor has about the actions of the board of directors, and indeed the Harness Racing Commission here, can there be any question that Leon Greenberg has total power over these people; that the board of directors of that corporation does what Leon Greenberg wants it to do? And indeed they have done it here.

Many letters that the Court has received from citizens in the Sullivan County area I submit show good things about the defendant, indeed, but do they also not show that the defendant has tremendous power and tremendous influence in Sullivan County?

And I ask you this: How many people wrote to your Honor because the track had made contributions to their charities? How many wrote to your Honor because the track employed them? And how many wrote because they do business on a contractual basis with the Raceway? And how many wrote out of possible fear or embarrassment in the event that Leon Greenberg would return to the track some day should his appeal be successful, or whatever?

We will never know the answers to those questions, your Honor, and they are largely rhetorical, I submit, because we cannot cross-examine those letters or those people.

And indeed, the power of Leon Greenberg in that track is so great that he has been retained as special counsel to the track, and it is interesting that neither Mr. Fahringer or Mr. Greenberg points that out to you during sentence. We know that he has continued on contract at his $100,000 a year salary, but you are not informed, as indeed announcements have been made by the president of the Raceway, Mr. Fausner, that Mr. Greenberg is the special counsel to the track, and indeed works at the track as special counsel.

And supposedly one of the items he is working on is SEC ma[illegible], and the reason given by Mr. Fausner for the hiring of Mr. Greenberg in that capacity was that they would not have to hire outside counsel. Of course, the track has hired the Friedlander, Gaines firm in New York for many years as its outside SEC counsel.

The Harness Racing Commission, your Honor, incredibly, after Mr. Greenberg surrendered his license, approved this arrangement, and indeed it shows that Leon Greenberg's power extends even that far. If a horseman,

a trainer, a groom or any other employee at that track had even been indicted, he would have been banished from the track forever.

How about the defendant's losses? The gist of most of the letters which the Court has received and which Probation received is that Leon Greenberg has suffered enough, and indeed Mr. Fahringer properly and eloquently point that out to the Court this morning. Surely he has suffered the stigma of conviction.

What else has he suffered? He is still employed as an executive at the track under a different name. He still makes $100,000 a year pursuant to contract at the track. He still has the moral support of the community and of the board of directors, who have virtually ignored the fact of his conviction, and he has not lost his good name, as his counsel suggests.

We have heard, in connection with the pleas for leniency, that Mr. Greenberg had many accomplishments as a District Attorney, that he has been an upstanding citizen in the Sullivan County community.

In that connection, your Honor, I spoke with Mr. Fahringer last week and I told Mr. Fahringer that I would ask him to communicate something to his client, and he assured me that he would.

What I told Mr. Fahringer was this: I told him that in connection with the continuing investigation which our office and the Grand Jury is conducting in the Sullivan County area, we would ask Mr. Greenberg to cooperate in that investigation, to come in to give us information, to cooperate with us before sentencing, if that was his desire, to give him the opportunity to do that, and that if he did so we would call to your Honor's attention the nature and extent of his cooperation.

That was last Thursday. It is now Wednesday. I spoke with Mr. Fahringer as recently as eight p.m. last night, and nothing. No response to the information I gave to him, to the request for Mr. Greenberg's cooperation, which the Government can read only as indicating that Mr. Greenberg has no interest in cooperating.

He knows full well the areas of our inquiry by reviewing the 3500 material, particularly of the comptroller, Robert Schoonmaker, who testified at trial.

So in conclusion, I submit this, Judge Pollack: We have had attestations of good character, we have had pleas of mercy. These are all from people who speak of the generous, compassionate facet of Leon Greenberg's character.

But this Court has heard the proof of Leon

Greenberg's betrayal of his corporate office. This Court has heard the proof of the serious crime which this Court will not overlook, as does the Harness Racing Commission and the board of directors, because this Court is not fooled by the type of doubletalk which is represented by the restitution matter and by the disposition of the Grossinger's check, and it is in just that fashion that Mr. Greenberg was able to get away with this offense as long as he was.

Because, your Honor, personal power influence obviously means nothing here. The only power here is the power facts and the only influence is the influence of the Court's own reasoning.

There is no excuse for Mr. Greenberg's conduct, not even the arrogance which is mentioned in one of the letters that his friends wrote to the Court. Yet, the more you read about Mr. Greenberg's accomplishments, the more you read about his position in the community, the more it is clear that this is a man who can offer no excuse; because if anyone, if any citizen in that county should have known what he was doing was wrong and know not to do it, it was Leon Greenberg.

Your Honor, we know that this Court will deal fairly with Leon Greenberg. Your Honor has undoubtedly

seen through the veneer here and it is Leon Greenberg beneath it on whom you will pass judgment.

The Government has nothing further, your Honor.

MR. FAHRINGER: Your Honor, may I just respond to a few of those? I won't take much of the Court's time.

Your Honor, there is absolutely no evidence whatsoever that this admittedly, your Honor, superficial and cursary examination was a whitewash, and I have to challenge that statement. I came into this --

THE COURT: Is there any evidence to the contrary --

MR. FAHRINGER: Your Honor, I mean --

THE COURT: -- that you know about?

MR. FAHRINGER: Your Honor, I spoke with Mr. McBride and I spoke, obviously, when I came into this case. I wanted to know about the investigation, and I will tell you right now what they did.

The public relations director, who was with that company and no longer with them --

THE COURT: Is there any evidence that you know of that an independent check was made by an outsider?

MR. FAHRINGER: Your Honor, no, only that Mr. McBride interviewed these witnesses, and they said --

THE COURT: Mr. McBride is an insider, isn't he?

MR. FAHRINGER: There is no question about that.

Your Honor, I have to say this to you: If I had --

THE COURT: Overstatement won't help.

MR. FAHRINGER: I beg your pardon?

THE COURT: I think I understand the situation. Overstating what the situation is will not be of any assistance to me.

MR. FAHRINGER: Your Honor, I only want to say this to you, and I hope you will take my word for this: On the restitution, I had some say in the supervision of that. It was never our intention that those funds would be in any way treated differently than just deposited in the account. I hope you will take my word for that.

What the racetrack did, your Honor, I think is most unfortunate here, but that was not our intention. It really was not, and Mr. Fausner is here to respond to your Honor, and Mr. Sussman is here to respond to your Honor if you have any misgivings about that.

THE COURT: I am not going to dwell on that, Mr. Fahringer, any more than to say that I suggest to you that you reread your own words on Page 22 of the sentencing memorandum. I think we could easily get deflected by the shoddy treatment that the Court was subjected to on the

subject of the return of the money, and were it not for something in Mr. Sussman's letter that sparked my interest and sent me to the probation officer to make a check, I would never have known that the money, which Mr. Sussman said was a payment, was nothing more than a deposit in a savings bank account in escrow, which Mr. Sussman says was done on Mr. Greenberg's statement.

MR. FAHRINGER: Your Honor --

THE COURT: I had to find that out by myself because I was suspicious as a result of the peculiar phrasing of Mr. Sussman's letter. He starts out by saying it is a payment, and then he winds up by saying that the money was placed with the Raceway.

MR. FAHRINGER: Your Honor, this --

THE COURT: Which is very different stuff. Your own memorandum says that it was only a pledge of his good faith. And that is not language that says that there is restitution.

MR. FAHRINGER: Your Honor, my only concern there was, and this distresses me --

THE COURT: Mr. Greenberg's letter of the 19th of December starts out saying that he wants to pledge his good faith and he has decided to reimburse it, reimburse the track, and winds up, in the last sentence, saying he

is depositing the money. That is not paying anybody, and I think I can be terribly angry about the way I have been treated for sentencing purposes.

MR. FAHRINGER: Your Honor, that distresses me and I apologize to the Court.

Of course, I can only say to you, and I can only hope --

THE COURT: These are words to hide a meaning, and it was the wrong time. I would not have objected to anybody remaining quiet, and I do not concern myself with whether there was or was not restitution, but to be told that there was a payment and reimbursement and -- your language -- indemnity, and then find out, by sending the probation officer back there to ask the specific question, that it was nothing more than an escrow deposit in a savings bank account to be returned to him if he wins his appeal -- and what the appeal has to do with this restitution, I do not know. This is not a civil case or a civil judgment.

MR. FAHRINGER: Will you hear me for a moment on that? Because I am concerned with my reputation with the Court.

THE COURT: I did not get into this, you are the one who opened it up.

MR. FAHRINGER: Your Honor, I promise to you right now, and I hope you will take my word for this --

THE COURT: I am taking your word for this, in Mr. Greenberg's presence, that full restitution has been made.

MR. FAHRINGER: That is right.

THE COURT: I listened very carefully to that sentence, and that is the first time that I have been so informed, because even the last doubletalking letter that I got from the track said that the sum has been deposited into a corporate account.

What does that mean? What kind of talk is that? Does that mean that the Raceway has collected the money?

MR. FAHRINGER: I have to agree with you, your Honor.

THE COURT: And this is a letter after you saw the result of my inquiry.

MR. FAHRINGER: I did not write that letter, your Honor.

THE COURT: I know you did not write any of these letters.

MR. FAHRINGER: Your Honor, will you please let me say this: I promise to you here and now that I knew absolutely nothing about the way the track was handling it.

THE COURT: There is a good deal to what Mr. Kingham says, that there is a lot going on up there at the Raceway that does not meet the eye squarely.

MR. FAHRINGER: Your Honor, I hope you are satisfied that I knew nothing about it. I was stunned.

THE COURT: And you could take it from me that I am not holding it against you or your client, because I have only one function here, and that is to assess the problem of the case that I tried.

But if, on the day of sentence, there is not fair and frank and full disclosure, it gives you a very brown feeling.

MR. FAHRINGER: I could not more agree with you, your Honor. It seems to me this is the one moment where there should be complete candor and frankness, and I only hope I have satisfied you that I have tried to discharge that responsibility to the Court.

May I say one other thing, your Honor, that I think I should respond to, and that is --

THE COURT: I frankly think that the Raceway was not fair to you,either, otherwise you would not have written to me as you did on Page 22 of your memorandum indicating that no loss has been suffered by anybody.

MR. FAHRINGER: That is right, your Honor.

THE COURT: That would only occur if they had collected and deposited and kept the money, which they did not do.

MR. FAHRINGER: You are absolutely right.

THE COURT: And which their letter of January 19th, one month after the first letter of December 19th, still says they have deposited into a euphemistically styled corporate account.

MR. FAHRINGER: I know, your Honor, and you have every right to be disturbed about that, and I only hope I have assured you that I am equally disturbed.

THE COURT: All you have to do is be alerted once, and you start looking around.

MR. FAHRINGER: That is right.

Your Honor, may I just respond to one other feature of this case?

Mr. Kingham did speak to me, about a week ago, about cooperation. I tell your Honor quite honestly I was taken back by that. I did not know that there was anything else up there that Mr. Greenberg could even help him with. I expressed that surprise to Mr. Kingham at the time.

I spoke to Mr. Greenberg. Mr. Greenberg tells me that he knows of no misconduct or illegality that is

going on up there.

I always worry, your Honor --

THE COURT: I am not concerned with that and that is not a matter that I will give any attention to on the sentence. That is a subject between the United States Government and your client.

MR. FAHRINGER: Thank you, your Honor.

THE COURT: That is not what you are here for today.

MR. FAHRINGER: Last, but not least, your Honor, I want you to know, and I say it with the candor that you have a right to expect from me, Mr. Greenberg is receiving no funds acting as special counsel. That is covered by the contract, so I do not want you to think that he is earning any additional money by those services. And they do deal with some matters that are pending before the track.

That is all I have to say.

THE COURT: It seems to me that on this sentencing the case has to be put in proper focus and refocused.

This case apparently developed as a side matter in the course of an investigation dealing with Superfecta racing by the New York State Task Force. Those in charge

of the investigation apparently came upon a suggestion that the racetrack had spent a large sum at Grossinger's Hotel for the bar mitzvah party given for the son of Leon Greenberg. The matter was turned over to the United States Attorney together with such data and possible testimony also furnished by the accomplices to the State authorities.

The money involved was paid by the Raceway pursuant to authorization of the Executive Committee of the Board of Directors on information supplied by, and vouched for by, Mr. Greenberg that the obligation represented the [illegible] had been incurred for Horsemen's Outings. Payment was made in accordance with bills supplied by the hotel setting out as the items thereof five Horsemen's Outings conducted in the summer of 1970. The actual payment was made in advance of the date of the bar mitzvah party and before the expenses thereof were incurred at the hotel.

The charges tried against Leon Greenberg were that he planned a fraud on the Raceway and used the mails to carry out and cover up the fraudulent use of the Raceway's money for personal and not Raceway purposes. The underlying offense was the same in each of the five counts; the separation into five counts was a separation into separate manifestations of the scheme and the substantive

fraud on the Raceway and the means used to conceal it.

The defendant has recently sent a check to the Raceway, made out on December 19, 1975, in the amount of the funds diverted from the Raceway to Grossinger's, namely, $4,856.16. The chairman of the Raceway board, by letter to the Court dated December 19, 1975, informed the Court that this was "a payment" -- "a payment" and that it was voluntarily made by Greenberg and not requested. What the chairman did not disclose was that the check had been put in some sort of an escrow by the track. And this came to light following an uneasiness of the Court with the language used in the Sussman letter of December 19, 1975.

That letter, after making the statement that this was a payment made voluntarily, recited to me that Mr. Greenberg apparently felt obliged -- the words were -- to place these funds with the Raceway. And Mr. Sussman said, "We thought you should know about this because it should have some influence on your judgment concerning his sentence." The letter failed to state facts necessary to make the statements not misleading. And this was accentuated by the pious hope of its last paragraph in connection with the sentence.

The chairman added in his letter to the Court that the Raceway's investigation had shown that the monies

had been disbursed for Horsemen's Outings. No report of any independent source was furnished to the Raceway or to the Court, so far as I am aware. The proof at Greenberg's trial conclusively established to the jury's satisfaction that the chairman's statement was incorrect.

In his letter of December 19, 1975, to the Raceway Greenberg characterized his act as a reimbursement. In his sentencing memorandum of January 13, 1976, the check is characterized as having "fully indemnified" the track, and accordingly no loss had been suffered by anyone.

As has already been indicated, it turns out that until two days ago the check was neither a payment, a reimbursement or an indemnification and that the loss had not been cleared.

To amend this, two days ago I received the letter of January 19, 1976, signed by the president, who again, in language that is suspect, says, "This sum has been deposited into a corporate account without any conditions whatsoever."

Delving into Greenberg's background, the Probation Department has ascertained that his former wife, from whom he was divorced in 1973, described him as a good and devoted father who has continued a close relationship with his children. Greenberg has apparently fulfilled

to date the financial obligations he undertook on the termination of his earlier marital relationship. In terms of his professional ambition, his former wife describes Greenberg as a manipulator, wheeler-dealer, but not suggesting or implying, however, that these were carried out by criminal conduct.

Greenberg's background is that of an average grammar school and high school student with good attendance and behavior. He thereafter attended college and law school obtaining a degree of Bachelor of Laws. On admission to the Bar, he became an Assistant District Attorney, part time, in Sullivan County and served from 1950 to 1957. His superior, now a judge, has indicated that Greenberg was a dedicated and conscientious Assistant during those years and displayed a vigorous attitude towards the prosecution of perpetrators of crime in his county.

From 1957 to 1975 Greenberg rose to various positions at Monticello Raceway, finally attaining the presidency, and earning in the last several years between $100,000 and $125,000 a year. He was certainly able in 1970 to bear the costs of his own personal obligations.

Many letter testimonials have been received by the Court written in extravagant prose, vouching for

Greenberg's fine qualities, initiative, inventiveness, dedication to business, support of communal, religious and charitable causes. No specific illustration accompanied any of these conclusary statements. No identification was given for the source of the benefactions. His tax returns leave open the question of whose money, in addition to the relatively small percentage of his own reported income and deductions, was used to accomplish such a broad scale of indicated communal, charitable and philanthropic gifts. Certainly if the giveaways were other people's money they would carry a lesser significance.

One more realistic letter on the subject of Greenberg's virtues called his criminal offenses an "aberration hinged with arrogance," "a piece of folly" due to his ability and daring and successes.

An adverse testimonial, unsigned, states that many people in his community feel that Mr. Greenberg has only been caught at one thing he did, that he is a ruthless person and very vindictive, in consequence of which the writer says he did not sign the letter.

The fact remains, nevertheless, that the defendant has attained status and stature in the community for his community endeavors, as indicated by the impressive list of character witnesses who testified on his behalf

at the trial.

The type of commercial crime underlying this prosecution is akin to corporate expense account raiding. In each case the underlying fault is a breach of fiduciary duty. In each case there generally is a supine acquiescence in the misuse of the funds by complacent colleagues or co-workers.

In reaching a just and sufficient measure of punishment, the Court will look first at the gravity of the offense in terms of the harm it has caused society. While the impact of the misapplication of corporate funds has a direct effect on the equity of the Raceway and its stockholders, its general social harm, although significant on the mores of the community is not an offense of high rank. Here the effect on the Raceway's equity could be wiped out if restitution in fact has been made, as stated.

Next, the Court looks at the character of the offender and the gravity of the threat he poses to society. The defendant is not a hardened criminal. He has heretofore earned substantial credits in the service of his country, his community and worthwhile communal, religious and philanthropic causes. While his business ethics, personal vindictiveness and aggressiveness have been challenged and in this case his conduct of his corporate

obligations and trust has shown a specific moral and legal breach, he does not appear before the Court as a general threat to the good order and discipline of society and its demand for commercial rectitude. Certainly no risk of violence is posed here.

Next, the Congressional purposes of the scale of punishment needs to be considered. The substantive offenses of misuse of the mails for fraudulent purposes are punishable by a fine of not more than $1,000 or imprisonment for not more than five years, or both. Scheming to commit the crimes, which are the object of conspiracy, is punishable at a maximum by fines of up to $10,000 and confinement of five years, or both.

The Congress has thus concluded that deterrence of frauds schemed or executed through the use of the mails is furthered by punishment within these ranges. However, it is left to the Courts, in the exercise of appropriate judicial restraint, to choose the measure of punishment that accomplishes the objective of the law in the specific case.

In choosing the measure, the Court must determine the degree of the sentence against punishments that have been imposed in the community for other crimes, and punishments that have been likewise imposed for similar

crimes. The purpose is to avoid a sentence disproportionate with the offense being administered. This search for guidelines is made to assist the determination of the penalties regarded as proper for the offense in question.

The Court must also assess, as best it can, whether any valid goals would be furthered by imposition of a prison sentence on the particular defendant before it for the particular crimes involved. Deterrence, protection of society, and rehabilitation of the criminal are valid goals of imprisonment.

This case, which had every appearance at first as an internal misuse of funds, having no social or general significance, has assumed an entirely different aspect. The so-called evidence at the trial showing that Horsemen's Outings took place sufficient to warrant the statement in Greenberg's letter that these funds were properly spent was not the evidence at the trial at all. The physical exhibits flatly contradicted that story, and the credible explanations of the accomplices gave ample ventilation to the fraud on the Raceway.

Instead, there was a well orchestrated attempt to mislead the jury as to the truth and fact contradicted by overwhelming documentary and credible proof. The continued insistence that there was credible evidence

at the trial to support the payment is indicative of blind adherence to unreality. The least that defendant Greenberg could do under the circumstances, just as he did at the trial, was to remain silent and not compound misconduct with assertions of affirmative evidence which just did not exist in fact.

With full restitution made, as the Court is now led to believe by the letter from the track and the vouchers in the courtroom in open court, I leave it to the stockholders and others interested to follow up whether the money has in fact been restored, as represented, and on the showing that defendant previously had a clean and unblemished record and seemingly poses no visible danger to society, the interests of the betrayed stockholders and of society in the particular case would seem sufficiently vindicated and the misconduct appropriately punished and deterred by a stinging monetary fine added to the inevitable professional consequence of conviction of a felony.

It is dubious, to say the least, that Leon Greenberg will be a better member of society after serving a prison sentence. Despite the disingenuous dealings with the check to the Raceway, which leave much to be explained by those concerned with the communications involved, the Court will not lose sight of the crimes for

which sentence is to be imposed. Those do not call for confinement under all the facts and circumstances at this time.

Accordingly, imposition of sentence of imprisonment only is suspended and defendant is sentenced to probation for a term of two years; and, in addition, the defendant is fined $1,000 on each of Counts 2, 3, 4 and 5, and $5,000 on Count 1, or a total of $9,000, together with the costs of the prosecution pursuant to Title 28, United States Code, Section 1918(b), the amount to be determined in accordance with law and entered hereon subject to the Court's approval. Payment is to be made within 60 days and the fines are to be committed fines.

That concludes the sentence.

DEFENDANT GREENBERG: Thank you, your Honor.

MR. FAHRINGER: Thank you, your Honor.

MR. KINGHAM: Thank you, your Honor.

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EXHIBITS

INDEX OF EXHIBITS

Court exhibit: Defendant's requested jury instructions

Government exhibit 1A-G: Bills for Horsemen's outings

Government exhibit 3: Check sent by Monticello Raceway to pay for Horsemen's outings

Government exhibit 8: Greenberg Bar Mitzvah Master account

Government exhibit 9: Pay out for gratuities

Government exhibit 10: City ledger

Government exhibit 12: Greenberg Bar Mitzvah memo

Government exhibit 13: Bill for Greenberg Bar Mitzvah

Government exhibit 15A: Greenberg letter of April 6, 1971

Government exhibit 19: Bill for Greenberg Bar Mitzvah

Government exhibit 20: Greenberg's personal check

Defendant's exhibit V: Blanket slip for golf carts

COURT EXHIBIT – Defendant's Requested Jury Instructions.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

vs.

LEON GREENBURG,

Defendant.

INDICTMENT #75-CR.532

DEFENDANT'S REQUESTED
JURY INSTRUCTIONS

Respectfully submitted,

HERALD PRICE FAHRINGER, ESQ.
Attorney for Defendant
One Niagara Square
Buffalo, New York 14202
(716) 849-1328

LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES,
of counsel.

October, 1975

COURT EXHIBIT — Defendant's Requested Jury Instructions.

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COURT EXHIBIT — Defendant's Requested Jury Instructions.

Preliminary Statement

These requested jury instructions, submitted on behalf of Leon Greenburg, are designed to cover subjects arising in the course of the defendant's trial which are of particular interest to him. Although these instructions deal, to some extent, with the presumption of innocence, proof beyond a reasonable doubt and other standard charges normally given to a jury in a criminal trial, this advice does not cover every element of law usually furnished to a jury in a criminal case.

These instructions may have to be supplemented to accomodate issues which may arise during the course of the trial and cannot be anticipated at this time. We respectfully reserve the right to furnish the court with any additional instructions which may be needed to meet those issues when and if they arise.

Counsel requests that the court inform the defendant of its proposed action upon the requests submitted prior to the making of final arguments to the jury pursuant to Rule 30 of the Rules of Criminal Procedure. It is also requested that these proposed instructions be marked as a court exhibit and be made part of the record of this trial.

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 1

Indictment--Mere Accusation

An indictment is no more than a formal method of accusing a defendant of an offense and bringing the case into court for trial and determination. It is not evidence of any wrongdoing or even an indication that a crime has been committed. No inference of any kind may be drawn from the fact that an indictment has been issued. It is merely an accusation made by a grand jury after hearing only one side of the case and such witnesses as the prosecutor chose to call.

Granted: _____

Denied: _____

In Substance: _____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 2

Counsel's Objections

The overruling or sustaining of objections, whether made by defense counsel or prosecution counsel, is not to be considered by you in any respect. Counsel not only have the right, but it is indeed their duty, on the offer of certain evidence, to press whatever legal objections there may be to its admission. They are simply performing their duty.

United States v. Corallo, 67 Cr. 1051, p. 2342 (S.D.N.Y. 1968)

Granted: _____

Denied: _____

In Substance: _____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 3

Mail Fraud--Elements to be Proved

In every mail fraud case, the prosecution is obliged to prove beyond a reasonable doubt the following elements:

1. There must be a scheme to defraud;
2. Representations must have been made which were known by the defendants to be false;
3. Some person or persons must have been defrauded; and
4. The United States mails were used.

attempted

Each of these elements must be established by the prosecution beyond a reasonable doubt. In other words, if you should find that the government proved three but not the fourth element under each count of this indictment you must find the defendant not guilty.

(United States v. Baren, 305 F.2d 527 (2d Cir. 1962)

Granted: ____

Denied: ✓

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 4

Elements of Offense--Mailing

I have already indicated to you that the prosecution is obliged to prove beyond a reasonable doubt that the documents charged as being part of this alleged fraudulent scheme must have been deposited in the mail. If you find from all the evidence that the government has failed to prove beyond a reasonable doubt that the so-called Grossinger bills in the amount of $4,856.16 were not sent through the mail but were delivered in some other fashion, then you must find the defendant not guilty under the second count of the indictment.

In the same sense, if you find from all the evidence that the government has failed to prove beyond a reasonable doubt that the check from Monticello Raceway in the amount of $4,856.16 was not mailed to Grossinger's, then you must find the defendant not guilty under the third count of the indictment. In other words, if you conclude that the check was hand delivered, then the government has failed to establish each and every element of the crime of mail fraud under Count Three of the indictment.

Granted: _____

Denied: _____

In Substance: _____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 5

Mail Fraud - Essence of the Offense

"The gist of the offense of mail fraud lies in the use of the mails to obtain money or property by fraudulent means." Thus, if you find in this case that the prosecution has failed to prove beyond a reasonable doubt that Leon Greenburg used the mails to obtain money or property by fraudulent means, you must find him not guilty.

Portion quoted is taken from United States v. Lynn, 461 F.2d 759 (10th Cir. 1972).

Granted: _____

Denied: _____

In Substance: _____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 6

Person Defrauded

If you should find from all the evidence in this case that the Monticello Raceway was not defrauded, then you must find the defendant not guilty. In other words, even if you are not satisfied that all of this money was properly allocated to the payment of horsemen's bills but that the expenditure was authorized as a business promotion, then you cannot find the defendant guilty.

United States v. Regen Office Supply Co., 421 F.2d 1174 (2d Cir. 1970)

Granted: ____

Denied: ✓

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 7

Actual Fraud

The prosecution in a mail fraud case is obliged to prove that the defendant committed an ". . . intentional fraud consisting in deception intentionally practiced to induce another to part with property or to surrender some legal right, and which accomplishes the end design." (Epstein v. United States, 174 F.2d 754 (6th Cir. 1949) In other words, "a breach of a legal or equitable duty, which, in spite of the fact that there is no moral guilt resulting from the breach of the duty, the law declares fraudulent because of its tendency to deceive others, to violate the public or private confidence, or to injure public interest is not the type of fraud contemplated by Section 1341 of Title 18 of the United States Code." (Epstein v. United States, supra)

Granted: ____

Denied: ____

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 8

Inadvertent Acts

Thus, if you find in this case that the defendant's acts ". . . were done inadvertently, mistakedly, or in good faith without an intention to defraud, then the government has not sustained its burden of proof and the defendant must be acquitted." United States v. Sheiner, 273 F.Supp. 977, 982-83 (S.D.N.Y. 1967), aff'd 410 F.2d 337 (2d Cir. 1969); United States v. Baren, 305 F.2d at 533.

Granted: ____

Denied: ____

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 9

Elements of Offense--Use of Mail Incident to Fraud

Before you can find a person guilty under this mail fraud statute, you must find that the use of the mails was "incident to and an essential part of" the alleged illegal scheme. In other words, the mailing must be "for the purpose of executing the scheme, as the statute requires." Kann v. United States, 323 U.S. 88, 94 (1944).

Thus, the prosecution is required to prove beyond a reasonable doubt that whatever documents were sent through the mail, such mailing was for the avowed purpose of executing an alleged fraudulent scheme.

Therefore, if you find from all the evidence that the Grossinger bills, the check paying those bills, the letter of inquiry from Leon Greenburg to Paul Grossinger, and Leon Greenburg's personal check in the amount of $987.09 were not mailed for the purpose of executing any fraudulent scheme, then you must find the defendant not guilty under Counts Two, Three, Four and Five.

Granted: _____

Denied: _____

In Substance: _____

COURT EXHIBIT — Defendant's Requested Jury Instructions.

Request No. 10

Conspiracy

To constitute the crime of conspiracy, there must be an illegal agreement between two or more persons to commit an offense against the United States. In this case, the charge is that Leon Greenburg, Paul Grossinger and Bernard Roth conspired and agreed together and with each other to commit the crime of mail fraud in violation of Section 1341.

Granted: ____

Denied: ____

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 11

Conspiracy--Elements to be Established

The elements that must be established, beyond a reasonable doubt, before the defendant may be found guilty of conspiracy as charged in the first count of this indictment are as follows:

(1) The evidence must establish beyond a reasonable doubt that there was in fact an illegal agreement among Leon Greenburg, Paul Grossinger and Bernard Roth to violate the federal mail fraud statute;

(2) The evidence must establish beyond a reasonable doubt that Leon Greenburg knew that there was such an illegal agreement which contemplated the violation of this federal statute and that wich such knowledge he participated in the conspiracy;

(3) In addition to the establishment of the existence of a conspiracy, if you find one existed, and the knowing participation by Leon Greenburg in that conspiracy with guilty knowledge, there must be, to constitute the crime of conspiracy, proof of the commission of at least one of the overt acts charged in the indictment, not necessarily by Leon Greenburg, but by one of the members of the alleged conspiracy.

Adapted from United States v. Michael Leo Fiorella, et al., United States District Court, Western District of New York, Cr. No. 1971-45, Hon. Harold Burke, March 8, 1972.

Granted: ____

Denied: ____

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 12

Conspiracy--Criminal Intent

To constitute the crime of conspiracy, the prosecution has to prove beyond a reasonable doubt that Leon Greenburg had the criminal intent to violate the federal mail fraud statute.

In other words, if you find that the defendant and Paul Grossinger and Bernard Roth intended to have these horsemen's bills paid but did not specifically intend to violate the federal mail fraud statute, then you must find the defendant not guilty.

Adapted from United States v. Michael Leo Fiorella, et al., United States District Court, Western District of New York, Cr. No. 1971-45, Hon. Harold Burke, March 8, 1972.

Granted: ____

Denied: ____

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 13

Conspiracy--Use of Mails to Defraud

Before you can convict Leon Greenburg of the crime of conspiracy to use the mails to defraud, there must be proof of an unlawful agreement and participation therein with an intent to defraud the Raceway. In this connection, the evidence must convince you beyond a reasonable doubt that Leon Greenburg did something other than merely authorize an expenditure of Raceway funds for services rendered to horsemen of the Raceway now claimed to be fictitious.

The prosecution is obliged to convince you beyond a reasonable doubt that no services were rendered by Grossinger's for any horsemen who used their facilities. If you should have a reasonable doubt in your mind that horsemen did, in fact, use their facilities and Leon Greenburg believed that funds were due and owing to Grossinger's, then you cannot find him guilty of conspiracy or the substantive offense of mail fraud.

Furthermore, in a prosecution for conspiracy to use the mails to defraud, the issue is not whether the horsemen's bills are or are not valid but whether there was in existence a scheme as a whole to defraud the Monticello Raceway.

(Adapted from Pelz v. United States, 54 F.2d 1001 (2d Cir. 1932)

Granted: ____
Denied: ✓
In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 14

Intention to Defraud

If you find from all of the evidence in this case or lack of evidence that the prosecution has failed to prove that the defendant, Leon Greenburg, specifically intended to defraud the Monticello Raceway of $4,856.16, then you must find him not guilty. In other words, if you find from the evidence in this case that he actually believed that horsemen had used Grossinger's facilities and the Raceway was obliged to pay for those services, or if some of these funds would be a legitimate deductible business expense for Monticello Raceway, then you must find the defendant not guilty.

Granted: ____

Denied: ✓

In Substance: ____

COURT EXHIBIT — Defendant's Requested Jury Instructions.

Request No. 15

Conspiracy--Mere Association

The mere association of a defendant with another person who has been designated by the government as a co-conspirator does not establish the participation in any criminal conspiracy, should you find one did exist. Nor is it knowledge of the conspiracy, if you should find one existed. In other words, the fact that Leon Greenburg associated with and spoke with Paul Grossinger and Bernard Roth does not in any of itself establish any alleged conspiracy.

Granted: ____

Denied: ____

In Subscance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 16

Circumstantial Evidence

Circumstantial evidence is where facts are established from which, in terms of common experience, one may logically infer other facts that are sought to be established. If the reasonable inferences to be drawn from any evidence leads to two conclusions, one favoring guilt and the other favoring innocence, then it is your duty to accept that which favors innocence. The reason for this is, since if each inference is reasonable, there would be a reasonable doubt as a matter of law.

Adapted from United States v. Richard Becker and Jack Eisen, 71 Cr. 733, United States District Court for the Southern District of New York, Hon. Edward Weinfeld.

Granted: ____

Denied: ✓

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions

Request No. 17

Presumption of Innocence and Reasonable Doubt

The defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment. This presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the entire trial, is in his favor even as I instruct you, and remains in his favor during the course of your deliberations in the jury room.

It is removed only if and when you are satisfied the government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. The question that naturally comes up is, what is a reasonable doubt?

The words almost define themselves--that there is a doubt founded in reason and arising out of the evidence in this case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all of the evidence. In short, it is a doubt for a reason.

If after a fair and impartial consideration of all the evidence you can, candidly and honestly, say you are not satisfied of the guilt of the defendant, that you do not have an

Presumption of Innocence and Reasonable Doubt (page 2)

abiding conviction of the defendant's guilt--in sum, if you have such a doubt as would cause you as a prudent person, to hesitate before acting in a matter of importance to yourselves, then you have a reasonable doubt, and in that circumstances it is your duty to acquit.

Taken verbatim from United States v. Richard Becker and Jack Eisen, 71 Cr. 733, United States District Court for the Southern District of New York, Hon. Edward Weinfeld.

Granted: ____

Denied: ____

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions

Request No. 18

Reasonable Doubt--Lack of Evidence

A reasonable doubt may arise not only on the evidence produced but also from a lack of evidence. Since the burden is upon the prosecution to prove the defendant guilty beyond a reasonable doubt of every essential element of the crimes charged, the defendant has a right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution. The law does not impose upon any defendant the duty of producing any evidence.

Granted: _____

Denied: _____

In Substance: _____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 19

Reasonable Doubt--Moral Certainty

A reasonable doubt exists in any case when, after a careful and impartial consideration of all the evidence, the jurors do not feel convinced to a moral certainty that the defendant is guilty of the offense charged.

The Bridges Perjury Trial, 10 F.R.D. 81, 87, 91

Granted: ____

Denied: ✓

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 20

Defendant's Election Not To Testify

[The defendant in this case has elected to rest upon his presumption of innocence.] This is his absolute right, and in no respect may it be considered by you as any evidence against him or as a basis for any presumption or inference unfavorable to him. The fact that he did not testify should not enter into your deliberations or discussions.

Adapted from United States v. Richard Becker and Jack Eisen, 71 Cr. 733, United States District Court for the Southern District of New York, Hon. Edward Weinfeld. (That enclosed in brackets is added by counsel. In Judge Weinfeld's original charge, it read, "The defendants . . . have not testified in this case.")

Granted: _____

Denied: _____

In Substance: _____

COURT EXHIBIT — Defendant's Requested Jury Instructions.

Request No. 21

Witnesses' Credibility

In judging the credibility of any witness you may consider whether his testimony was inspired by a motive of self-interest, personal advantage, or hostility to a defendant so that he gave false or colored testimony against him. You must consider whether the testimony of such a person was a fabrication induced by a belief or a hope or an expectation that he will receive favorable consideration, such as not being indicted or charged with the offense himself. United States v. Cohen et al., 69 Cr. 55, Hon. Inzer B. Wyatt.

Granted: ____

Denied: ____

In Substance: ____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 22

Matters which should not be included
in Court's instructions

It is respectfully requested that the Court not include in its instructions to the jury any reference to the following subjects which will be highly prejudicial and may unduly influence the jury:

(a) Any claim that the crime charged is most serious;

(b) Any claim that the case is important;

(c) Any statement about the protection of the public;

(d) No reasons should be given for the need for a conspiracy statute.

Granted: _____

Denied: _____

In Substance: _____

COURT EXHIBIT – Defendant's Requested Jury Instructions.

Request No. 23

Government as a Party

You are not to be influenced by the fact that the goverment of the United States is a party to this action. I charge you that the goverment is to be considered the same as any other party and that the United States Attorney is to be considered as any other lawyer in any case. These factors should not in any way enter into your consideration of the guilt or innocence of the defendant.

Granted: _____

Denied: _____

In Substance: _____

GOVERNMENT EXHIBIT 1A-G – Bills for Horsemen's Outings.

GX-1A-G

"FAMOUS FOR FOOD AND HOSPITALITY"

The GROSSINGER

OPEN ALL YEAR - EVERY SPORT FOR EVERY SEASON

GROSSINGER, N. Y. July 8 19 70

Remittance
Purchased of
Invoice

To Monticello Raceway
Route 17 and 17-B
Monticello, New York
Att: Mr. Leon Greenberg

	31 Horsemen & Racing Officials				
	Green Fees- 31 @ $8.00			$ 248	00
	16 Cart Rentals	$ 160	00		
	Sales Tax	8	00 ✓	168	00
	31 Lunches- @ $3.50	108	50		
	Sales Tax	5	43 ✓		
	Gratuities- 31 @ $.50	15	50	129	43
	Cocktail Party- 31 @ $6.00	186	00		
	Sales Tax	9	30 ✓		
	Gratuities- 15% of $186.00	27	90	223	20
	31 Dinners @ $12.50	387	50		
	Sales Tax	19	37 ✓		
	Gratuities- 31 @ $1.50	46	50	453	37
	Total			1,222	00
	Less: 25% Discount (excluding gratuities) on $1,132.10			283	03
	AMOUNT DUE:-			$ 938	97

GOVERNMENT EXHIBIT 1A-G – Bills for Horsemen's Outings.

"FAMOUS FOR FOOD AND HOSPITALITY"

The GROSSINGER

OPEN ALL YEAR - EVERY SPORT FOR EVERY SEASON

GROSSINGER, N. Y. July 22 19 70

Remittance
Purchased of
Invoice

To Monticello Raceway
Route 17 and 17-B
Monticello, New York
Att: Mr. Leon Greenberg

46 Horsemen, Pressmen and Raceway Officials		
Green Fees - 38 @ $8.00		$ 304 00
19 Cart Rentals	$ 190 00	
Sales Tax	9 50	199 50
46 Lunches @ $3.50	161 00	
Sales Tax	8 05	
Gratuities- 46 @ $.50	23 00	192 05
Cocktail Party- 46 @ $6.00	276 00	
Sales Tax	13 80	
Gratuities- 15% of $276.00	41 40	331 20
43 Dinners @ $12.50	537 50	
Sales Tax	26 88	
Gratuities- 43 @ $1.50	64 50	628 88
Bar Charges		94 40
Total		1,750 03
Less: 25% Discount (excluding gratuities) on $1,621.13		405 28
AMOUNT DUE:-		$1,344 75

GOVERNMENT EXHIBIT 1A-G — Bills for Horsemen's Outings. GX-1A-

"FAMOUS FOR FOOD AND HOSPITALITY"

The GROSSINGER

OPEN ALL YEAR - EVERY SPORT FOR EVERY SEASON

GROSSINGER, N. Y. August 5 19 70

Remittance
Purchased of
Invoice

TO Monticello Raceway
Route 17 and 17-B
Monticello, New York
Att: Mr. Leon Greenberg

27 Horsemen & Raceway Officials		
Green Fees- 27 @ $8.00		$ 216 00
14 Cart Rentals	$ 140 00	
Sales Tax	7 00	147 00
27 Lunches @ $3.50	94 50	
Sales Tax	4 73	
Gratuities- 27 @ $.50	13 50	112 73
Cocktail Party- 25 @ $6.00	150 00	
Sales Tax	7 50	
Gratuities- 15% of $150.00	22 50	180 00
25 Dinners @ $12.50	312 50	
Sales Tax	15 62	
Gratuities- 25 @ $1.50	37 50	365 62
Total		1,021 35
Less: 25% Discount (excluding gratuities) on $947.85		236 96
AMOUNT DUE:-		$ 784 39

GOVERNMENT EXHIBIT 1A-G — Bills for Horsemen's Outings.

GX-1A-G

"FAMOUS FOR FOOD AND HOSPITALITY"

The GROSSINGER

OPEN ALL YEAR - EVERY SPORT FOR EVERY SEASON

GROSSINGER, N. Y. August 12 1970

Remittance To Monticello Raceway
Purchased of Route 17 and 17-B
Invoice Monticello, New York
Att: Mr. Leon Greenberg

21 Horsemen & Raceway Officials			
Green Fees - 21 @ $8.00		$	168 00
11 Cart Rentals	$ 110 00		
Sales Tax	5 50		115 50
21 Lunches @ $3.50	73 50		
Sales Tax	3 68		
Gratuities- 21 @ $.50	10 50		87 68
Cocktail Party- 19 @ $6.00	114 00		
Sales Tax	5 70		
Gratuities- 15% of $114.00	17 10		136 80
19 Dinners @ $12.50	237 50		
Sales Tax	11 87		
Gratuities- 19 @ $1.50	28 50		277 87
Total			785 85
Less: 25% Discount (excluding gratuities) of $729.75			182 44
AMOUNT DUE:		$	603 41

GOVERNMENT EXHIBIT 1A-G – Bills for Horsemen's Outings. GX-1A-G

"FAMOUS FOR FOOD AND HOSPITALITY"

The GROSSINGER

OPEN ALL YEAR - EVERY SPORT FOR EVERY SEASON

GROSSINGER, N. Y. August 26 1970

Remittance
Purchased of
Invoice

To Monticello Raceway
Route 17 and 17-B
Monticello, New York
Att: Mr. Leon Greenberg

1970

	43 Horsemen, Pressmen and Raceway Officials:		
	Green Fees 41 @ $8.00		$ 328 00
	21 Cart Rentals	$ 210 00	
	Sales Tax	10 50	220 50
	43 Lunches @ $3.50	150 50	
	Sales Tax	7 53	
	Gratuities- 43 @ $.50	21 50	179 53
	Cocktail Party-43 @ $6.00	258 00	
	Sales Tax	12 90	
	Gratuities- 15% of $258.00	38 70	309 60
	33 Dinners @ $12.50	412 50	
	Sales Tax	20 62	
	Gratuities- 33 @ $1.50	49 50	482 62
	Bar Charges		22 70
	Total		1,542 95
	Less 25% Discount on $1,433.25 (excluding gratuities)		358 31
	AMOUNT DUE:-		$1,184 64

GOVERNMENT EXHIBIT 1A-G – Bills for Horsemen's Outings. GX-1A-G

"F.AOUS FOR FOOD AND HOSPITALITY"

The GROSSINGER

OPEN ALL YEAR - EVERY SPORT FOR EVERY SEASON

GROSSINGER, N. Y. August 31 1970

Remittance
Purchased of
Invoice
1970

To Monticello Raceway
Route 17 and 17-B
Monticello, New York
Att: Mr. Leon Greenberg

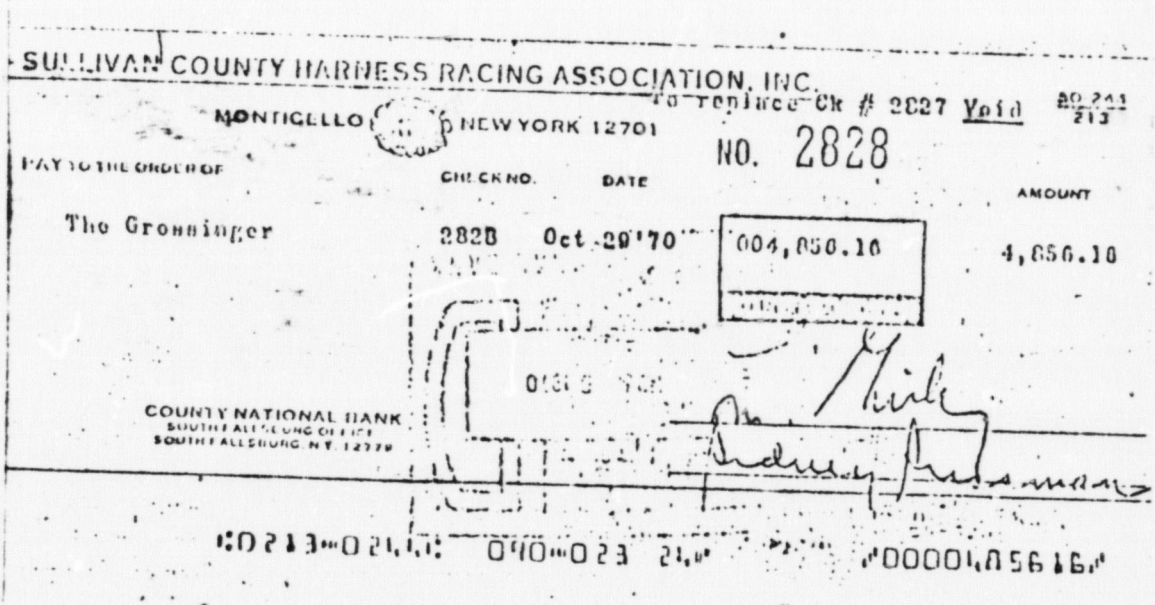
SUMMARY STATEMENT

Horsemen, Pressmen & Raceway Officials
Outings

July	8	$ 938 97	
	22	1,344 75	
Aug.	5	784 39	
	12	603 41	
	26	1,184 64	
		Balance Due:-	$4,856 16

GOVERNMENT EXHIBIT NO. 3 – Check sent by Monticello Raceway to pay for Horsemen's Outings.

GX-3



SULLIVAN COUNTY HARNESS RACING ASSOCIATION, INC.

To replace Ck # 2827 Void

MONTICELLO NEW YORK 12701

NO. 2828

PAY TO THE ORDER OF | CHECK NO. | DATE | AMOUNT

The Gronsinger | 2828 | Oct 29'70 | 004,656.16 | 4,656.16

COUNTY NATIONAL BANK
SOUTHFALLSBURG OFFICE
SOUTHFALLSBURG, N.Y. 12779

:0213=0216: 010=023 21: "00004656 16"

GOVERNMENT EXHIBIT NO. 8 – Greenberg Bar Mitzvah
Master account.

GREENBERG BAR MITZVAH MASTER ACC,T GX-8

CITY LEDGER

			CHARGES	CREDITS	BALANCE	PAYOR	
	1	[illegible]	[illegible]				
	2	[illegible]	[illegible]				
	3	[illegible]	1031.20		[illegible]		
	4	[illegible]	1200.00		[illegible]		
	5	[illegible]	[illegible]		[illegible]		
	6	[illegible]	[illegible]		[illegible]		
	7	[illegible]		2259.16	[illegible]		
	8	[illegible]		987.09	[illegible]		
	9	JUL-6-71 CHGAC	987.09		987.09		
	10					987.09	
	11	JUL 13-71 C/CO		987.09	0.00		
	12						

EXTRA MEAL CHARGE WM. ALLEN & COMPANY, N. Y. S. BCK FORM 7088

No 4356 11/7 19

M. ROOM

EXTRAS MEAL $ AMOUNT

PAID CHARGED

$ CASHIER $ CLERK

REMARKS

[illegible]

GROSSINGER'S - GROSSINGER, N. Y. 12734

THIS ACCOUNT BE REFERRED TO AN ATTORNEY FOR COLLECTIO
THE UNDERSIGNED AGREES TO PAY AN ATTORNEY'S FEE OF 20 [illegible] OF T
ABOVE BILL PLUS ALL COURT COSTS AND EXPENSES.

GUEST'S SIGNATURE

CHARGE TO

ADDRESS

CITY & STATE ZIP

BEST COPY AVAILABLE

GOVERNMENT EXHIBIT NO. 9 – Pay out for gratuities.

GX-9

The Grossinger

Grossinger, N. Y.

NAME _____ DATE 1/1 19 26

EXPLANATION ROOM

Signed by _____

GOVERNMENT EXHIBIT NO. 10 – City Ledger.

4505 GREENBERG, ISA M/M 40.00-2 C 8209 GX-10
11/65 11/8L BS

C

MEMO	LINE	DATE	EXPLANATION	CHARGES	CREDITS	BALANCE
	1	NOV-6-70	[illegible]	* 80.00		
	2	NOV-6-70	TAX [illegible]	* 4.00		* 84.00
	3	NOV-7-70	[illegible]	[illegible]		
	4	NOV-7-70	TAX [illegible]	* 4.00		* [illegible]
	5					
	6					
	7					
	8					
	9					
	10					
	11					
	12					
	13					
	14					
	15					
	16					
	17					
	18					
	19					
	20					
	21					
	22					
	23					
	24					

CODE
A - NEWS - RADIO
B - TENNIS
C - VALET & LAUNDRY
D - MON AMI
E - SKATING - SKIING
F - DRUGS - DOCTOR
H - STEPHENS
R - TRANSPORTATION
L - COSMETICS

Grossinger's
GROSSINGER, N. Y. 12734

Good bye for a while and thank you for the privilege of serving you. I hope your holiday here was a happy one. We enjoyed having you.
Jennie Grossinger

LAST BALANCE IS AMOUNT DUE UNLESS OTHERWISE INDICATED

GOVERNMENT EXHIBIT NO. 12 – Greenberg Bar Mitzvah Memo. GX-12

GREENBERG BARMITZVAH
COST
11/7/70

of People -312

Food Cost		$2,383-
Liquor Cost		522.45
Addtional Payroll Costs		
Dining Room - 14 Waitresses 7 Bus Boys 21 @ $35.00	$ 735.00	
Kitchen - Cooks - 22 hours overtime or 33 hours @ $5.00 hourly	165.00	
- Dishwashers - 19 hours overtime or 28 1/2 hours @ $1.85 hourly	52.73	
Bar - 14 Bar Waiters - 8 hours overtime or 168 hours @ $1.125 hourly	189.00	
- 2 Terrace Room Porters - 11 hours overtime or 16 1/2 hours @ $1.85 hourly	30.52	
Playhouse Porters - 3 Porters - 4 hours overtime 18 hours @ $1.85 hourly	33.30	
Convention Porters - 4 Porters - 4 hours overtime or 24 hours @ $1.85 hourly	44.40	
TOTAL	$1249.95	
+ 15% P/R Taxes, Etc.	187.50	
Total Addt'l P/R Costs		1437.45
Total Cost .		$4,342.90

ADD: Cash Paid Out:		
Advances for Gratuities		1,200-
Gratuities distributed to Bar Waiters (15% of $1502.75)		225.35
TOTAL COST & CASH ADVANCED		$5,768.25

Note: Provided room (405) for
2 days for 2 people and 2 rooms
for changing clothes on 11/7/70

GOVERNMENT EXHIBIT NO. 13 – Bill for Greenberg Bar Mitzvah.

GX-13

"FAMOUS FOR FOOD AND HOSPITALITY"

The GROSSINGER

OPEN ALL YEAR - EVERY SPORT FOR EVERY SEASON

SEE ALPHA FILE IN CASHIER'S OFFICE

GROSSINGER, N. Y. March 12, 19 71

Remittance To Mr. Leon Greenberg

Purchased of 190 Broadway

Invoice Monticello, New York

CONFIRMED STATEMENT

Nov. 7, 1970	Greenberg Bar Mitzvah	$5,768 25
	Additional Gratuities Advanced -previously omitted	75 00
	TOTAL	$5,843 25

GOVERNMENT EXHIBIT NO. 15A – Greenberg letter of 4-6-71.

GX-15A



EXECUTIVE OFFICES

April 6, 1971

Mr. Paul Grossinger
The Grossinger
Grossinger, N.Y. 12734

Dear Paul:

Would you please verify the correctness of this bill.

Best wishes.

Sincerely,

Leon Greenberg

LEON GREENBERG

em
enc.

987.09

GOVERNMENT EXHIBIT NO. 15A – Greenberg letter of 4-6-71.

"FAMOUS FOR FOOD AND HOSPITALITY"

The GROSSINGER

OPEN ALL YEAR - EVERY SPORT FOR EVERY SEASON

GROSSINGER, N. Y. April 2 19 71

Remittance
Purchased of
Invoice

To Mr. Leon Greenberg
190 Broadway
Monticello, New York

Nov. 7, 1970 Balance due ~~$5,083.25.~~ $ 987.09

GOVERNMENT EXHIBIT NO. 19 – Bill for Greenberg Bar Mitzvah.

GX-19

"FAMOUS FOR FOOD AND HOSPITALITY"

The GROSSINGER

OPEN ALL YEAR - EVERY SPORT FOR EVERY SEASON

GROSSINGER, N. Y. July 7, 1971

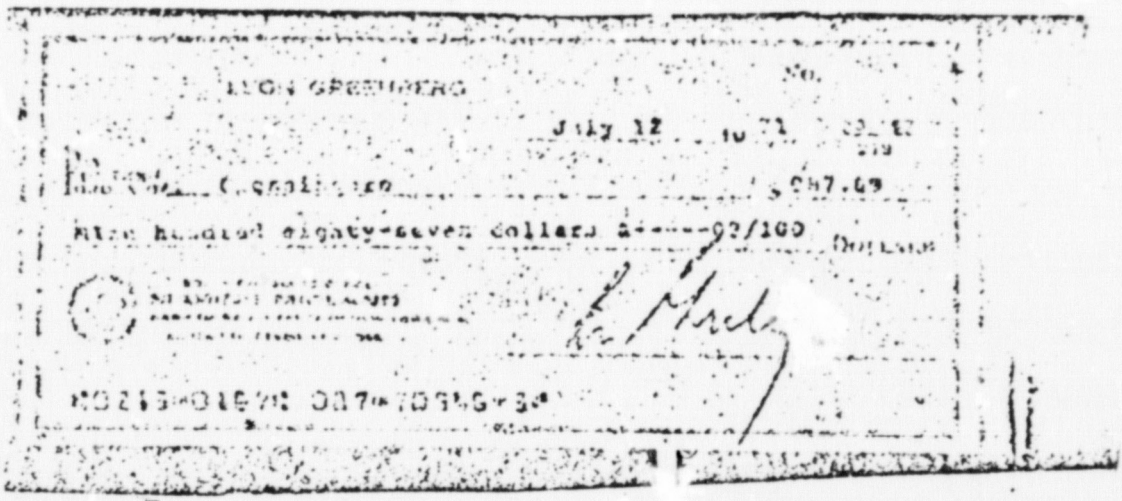
Remittance
Purchased of
Invoice

TO Mr. Leon Greenberg
190 Broadway
Monticello, New York

Nov. 7, 1970	Balance due	$987.09

Pd.

GOVERNMENT EXHIBIT NO. 20 – Greenberg's personal check. GX-20



BEST COPY AVAILABLE

DEFENDANT'S EXHIBIT V – Blanket slip for golf carts.

GUEST COPY

Grossinger's

Payable to → **THE GROSSINGER GOLF CLUB**

GROSSINGER, N. Y.

Mail bill

DATE 5/23 19 73

NAME Aberger Mr Jacob

ROOM # monticello Roadway CLERK Linda

Monticello, Ny	CASH	CHARGE
DAILY GREEN FEE		
ELECTRIC CART RENTAL		
CART NO. 9 HOLES		
18 HOLES (13)		137.80
HAND CART		
TOTAL		137.80

RENTAL CONTRACT AND RELEASE OF LIABILITY

Upon my representation that I am at least twenty one years of age and the holder of a valid motor vehicle driver's license for the current year issued by the State in which I reside, and in consideration of the physical benefit and pleasure which I expect to derive from the use of the electric golf cart hereinafter mentioned, I hereby release, release and forever discharge and agree to indemnify and hold harmless The Grossinger, a New York corporation, its servants, agents and employees from any and all claims and demands of any and every kind and character for injury to my person or damage to my property as a result of any accident in which I may become involved at any time hereafter while riding, using or operating any electric golf cart rented to me by said Company, and for injury or damage to the person or property of any other person or persons inflicted or claimed to have been caused by me at any time hereafter while riding, using or operating any such vehicle.

The Renter further covenants and agrees to pay promptly any claim for damage to the electric cart caused by the Renter's negligence and will return the electric cart in as good condition as when received by the Renter, ordinary wear and tear excepted.

IN WITNESS WHEREOF, I have hereunto set my hand, affixed my seal and delivered these presents, on the date above written.

NOTE: ONLY 2 RIDERS AND 2 GOLF BAGS ALLOWED PER CART

13982

GUEST SIGNATURE

BUSINESS FORMS BY BOLEY - GOSHEN, N. Y.

8142

VOUCHER No. ____ CASH DISBURSEMENTS VOUCHER No. 147

APPROVED BY ____

PAID

Affidavit of Service

Records and Briefs
For State and Federal Courts
Established 1881

313 Montgomery Street
Syracuse, New York 13202
(315) 422-4905

Russell D. Hay/President
Everett J. Rea/General Manager

Spaulding Law Printing

Re: **United States of America vs. Leon Greenberg**

State of New York)
County of Onondaga) ss.:
City of Syracuse)

EVERETT J. REA,
Being duly sworn, deposes and says: That he is associated with Spaulding Law Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of **Herald Price Fahringer, Esq.,**

Attorney(X) for **Appellant,**

one (1) copy

(X)he personally served ~~XXXXXXXXX~~ of the printed ☐ Record ☐ Brief ☒ Appendix of the above entitled case addressed to:

T. BARRY KINGHAM, ESQ.
Assistant U.S. Attorney
U.S. Court House
Foley Square
New York, New York 10007

☒ By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York.

☐ By hand delivery

Everett J. Rea
EVERETT J. REA

Sworn to before me this **24th** day of **February, 1976.**

Donald C. Quinn
~~Notary Public~~
Commissioner of Deeds